

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 8

Senator McColley

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, and to make an appropriation. 22

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

Section 1. That sections 133.13 and 727.01 be amended and 23
sections 122.40, 122.401, 122.403, 122.404, 122.406, 122.407, 24
122.408, 122.4010, 122.4013, 122.4015, 122.4016, 122.4017, 25
122.4018, 122.4019, 122.4020, 122.4021, 122.4023, 122.4024, 26
122.4025, 122.4030, 122.4031, 122.4033, 122.4034, 122.4035, 27
122.4036, 122.4037, 122.4040, 122.4041, 122.4043, 122.4044, 28
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122.4060, 122.4061, 122.4063, 122.4070, 122.4071, 122.4073, 30
122.4075, 122.4076, 122.4077, 188.01, 188.02, 188.05, 188.08, 31
188.11, 188.14, 188.17, 188.20, 188.23, 188.27, 188.30, 303.251, 32
505.881, 4926.01, 4926.03, 4926.06, 4926.09, 4926.12, 4926.15, 33
4926.18, 4926.21, 4926.24, 4926.27, 4926.30, 4926.33, 4926.36, 34
4926.39, 4926.42, 4926.43, 4926.45, 4926.48, 4926.51, 4926.54, 35
4926.57, and 4926.60 of the Revised Code be enacted to read as 36
follows: 37

Sec. 122.40. As used in sections 122.40 to 122.4077 of the 38
Revised Code: 39

(A) "Application" means an application made under section 40
122.4013 of the Revised Code for a program grant. 41

(B) "Broadband funding gap" means the difference between 42
the total amount of money a broadband provider calculates is 43
necessary to construct the last mile of a specific broadband 44
network and the total amount of money that the provider has 45
determined is the maximum amount of money that is cost effective 46
for the provider to invest in last mile construction for that 47
network. 48

(C) (1) "Broadband provider" means one of the following: 49

(a) A video service provider as defined in section 1332.21 50
of the Revised Code; 51

<u>(b) A provider that is capable of providing tier one or tier two broadband service and is one of the following:</u>	52 53
<u>(i) A telecommunications service provider;</u>	54
<u>(ii) A satellite broadcasting service provider;</u>	55
<u>(iii) A wireless service provider as defined in section 4927.01 of the Revised Code.</u>	56 57
<u>(2) "Broadband provider" does not include a governmental or quasi-governmental entity.</u>	58 59
<u>(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.</u>	60 61 62 63 64
<u>(E) "Last mile" means the last portion of a physical broadband network that connects an eligible project to the broader network used to provide tier two broadband service, and to which both of the following apply:</u>	65 66 67 68
<u>(1) It includes other network infrastructure in the last portion of the network that is needed to provide tier two broadband service to residences as part of an eligible project, but does not include network infrastructure in any portion of the network that is outside of the last portion.</u>	69 70 71 72 73
<u>(2) It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance.</u>	74 75
<u>(F) "Ohio residential broadband expansion grant program" means the program established under sections 122.40 to 122.4077 of the Revised Code.</u>	76 77 78

(G) "Program grant" means money awarded under the Ohio residential broadband expansion grant program to assist in covering the broadband funding gap for an eligible project. 79
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(H) "Satellite broadcasting service" has the same meaning as in section 5739.01 of the Revised Code. 82
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(I) "Telecommunications service" has the same meaning as in section 1332.21 of the Revised Code. 84
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(J) "Tier one broadband service" means a retail wireline or wireless broadband service capable of delivering internet access at speeds of at least ten but less than twenty-five megabits per second downstream and at least one but less than three megabits per second upstream. 86
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(K) "Tier two broadband service" means a retail wireline or wireless broadband service capable of delivering internet access at speeds of at least twenty-five megabits per second downstream and at least three megabits per second upstream. 91
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(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. 95
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(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- 103
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year period. 108

Sec. 122.401. There is hereby established the Ohio 109
residential broadband expansion grant program within the 110
development services agency. The agency shall administer and 111
provide staff assistance for the program. The agency shall be 112
responsible for receiving and reviewing applications for program 113
grants and for sending completed applications to the broadband 114
expansion program authority for final review and award of 115
program grants. 116

Sec. 122.403. (A) (1) There is hereby created, within the 117
development services agency, the broadband expansion program 118
authority, which shall consist of the director of development 119
services or the director's designee, the director of the office 120
of InnovateOhio or the director's designee, and three other 121
members as follows: one member appointed by the president of the 122
senate, one member appointed by the speaker of the house of 123
representatives, and one member appointed by the governor. 124

(2) Appointed members shall have expertise in broadband 125
infrastructure and technology. Appointed members may not be 126
affiliated with or employed by the broadband industry or in a 127
position to benefit from a program grant. 128

(3) The assignment of designees by the director of 129
development services and the director of InnovateOhio shall be 130
made in writing. 131

(B) Appointed members shall serve four year terms and are 132
eligible for reappointment. 133

(C) Vacancies shall be filled in the same manner as 134
provided for original appointments. Any member appointed to fill 135
a vacancy occurring prior to the expiration of the term for 136

which the member's predecessor was appointed shall hold office 137
for the remainder of that term. 138

(D)(1)(a) Appointed members shall receive a monthly 139
stipend as calculated under section 145.016 of the Revised Code 140
in an amount that will qualify each member for one year of 141
retirement service credit under the Ohio public employees 142
retirement system for each year of the member's term. 143

(b) Notwithstanding the requirement of section 145.58 of 144
the Revised Code that eligibility for health care coverage 145
provided under that section be based on years and types of 146
service credit in accordance with rules adopted by the public 147
employees retirement board, if the board provides health care 148
coverage under that section, no service credit earned for 149
service as a member of the authority shall be considered for 150
purposes of determining eligibility for coverage under that 151
section. 152

(c) Members shall receive reimbursement for their 153
necessary and actual expenses incurred in performing the 154
business of the authority. The reimbursements constitute, as 155
applicable, administrative costs of the Ohio residential 156
broadband expansion grant program. 157

(2) An appointed member of the authority who is currently 158
serving as an administrative department head under section 159
121.03 of the Revised Code is not eligible to receive a stipend 160
under division (A) of this section. 161

(3) The agency shall be responsible for paying all 162
reimbursements and stipends under this section. 163

(E) The director of development services, or the 164
director's designee, shall serve as chairperson of the 165

authority. The members of the authority annually shall elect a 166
vice-chairperson from the members of the authority. Three 167
members of the authority constitute a quorum to transact and 168
vote on the business of the authority. An affirmative vote of 169
three members is necessary to approve any business, including 170
the election of the vice-chairperson. 171

(F) If the director of development services assigns a 172
designee to serve on the authority, the director of development 173
services shall appoint a professional employee of the 174
development services agency to serve as the director's designee 175
at authority meetings. In the absence of the director of 176
development services or the director's designee, the vice- 177
chairperson of the authority shall serve as chairperson of 178
authority meetings. 179

(G) The authority is not an agency for purposes of 180
sections 101.82 to 101.87 of the Revised Code. 181

Sec. 122.404. (A) Members of the broadband expansion 182
program authority may attend meetings of the authority 183
electronically by means of electronic communication if all of 184
the following apply: 185

(1) At least three of the members attending the meeting 186
are present in person at the place where the meeting is 187
conducted. 188

(2) The means of electronic communication permits, for the 189
duration of the meeting, simultaneous communication among the 190
members attending electronically, the members attending in 191
person, and all members of the public attending in person. 192

(3) All votes taken at the meeting are to be taken by roll 193
call vote. 194

(B) Except in the case of an emergency, a member who 195
intends to attend a meeting by means of electronic communication 196
shall notify the chairperson of the member's intent not less 197
than forty-eight hours before the scheduled time of the meeting. 198

Sec. 122.406. The broadband expansion program authority 199
shall consider each application for a program grant that the 200
development services agency has reviewed and sent to it. The 201
authority shall score all applications according to the scoring 202
system established under section 122.4040 of the Revised Code 203
and award program grants based on that system according to 204
sections 122.4043 and 122.4044 of the Revised Code. 205

Sec. 122.407. The broadband expansion program authority 206
shall do the following: 207

(A) Continually examine, and propose updates to, any 208
broadband plan provided by law enacted by the general assembly 209
or executive order issued by the governor; 210

(B) Monitor the Ohio residential broadband expansion grant 211
program, including by doing the following: 212

(1) Tracking the details for annual applications to the 213
program, including: 214

(a) The number of applications; 215

(b) The geographic locations of the eligible projects 216
listed in the applications; 217

(c) The broadband providers submitting applications; 218

(d) A description of the tier two broadband infrastructure 219
and technology proposed in applications; 220

(e) A description of any public right-of-way or public 221

<u>facilities to be utilized for the projects;</u>	222
<u>(f) The speeds of the tier two broadband services under</u>	223
<u>the projects;</u>	224
<u>(g) The amount of the grant funds requested for each</u>	225
<u>project and the proportion of project funding to be provided by</u>	226
<u>the broadband provider and by other entities;</u>	227
<u>(h) The number of residential and nonresidential locations</u>	228
<u>that will have access to tier two broadband service under each</u>	229
<u>project.</u>	230
<u>(2) Tracking the program grants awarded annually,</u>	231
<u>including:</u>	232
<u>(a) The number of program grants;</u>	233
<u>(b) The geographic location or locations of the projects;</u>	234
<u>(c) The broadband providers that received program grants</u>	235
<u>and the entities or companies that submitted the application;</u>	236
<u>(d) A description of the tier two broadband infrastructure</u>	237
<u>and technology deployed in each project;</u>	238
<u>(e) A description of any public right-of-way or public</u>	239
<u>facilities utilized as part of the project;</u>	240
<u>(f) The speeds of the tier two broadband services enabled</u>	241
<u>by each project;</u>	242
<u>(g) The amounts of each program grant, the share of the</u>	243
<u>project funding provided by the broadband provider, and any</u>	244
<u>share of the project funding provided by other entities;</u>	245
<u>(h) The number of residential and nonresidential locations</u>	246
<u>that will have access to tier two broadband service for each</u>	247
<u>project.</u>	248

<u>(3) Listing the amount of any unencumbered program grant</u>	249
<u>funds that remain available for award under the Ohio residential</u>	250
<u>broadband expansion grant program;</u>	251
<u>(4) Adding any additional factors deemed necessary by the</u>	252
<u>authority to monitor the program.</u>	253
<u>(C) Review all progress reports and operational reports</u>	254
<u>required under section 122.4070 of the Revised Code.</u>	255
<u>(D) Review all pending county requests made pursuant to</u>	256
<u>section 122.4051 of the Revised Code for program grants.</u>	257
<u>(E) Identify any best practices for, and impediments to,</u>	258
<u>the continued expansion of tier two broadband infrastructure and</u>	259
<u>technology in the state;</u>	260
<u>(F) Coordinate and promote the availability of publicly</u>	261
<u>accessible digital literacy programs to increase fluency in the</u>	262
<u>use and security of interactive digital tools and searchable</u>	263
<u>networks, including the ability to use digital tools safely and</u>	264
<u>effectively for learning, collaborating, and producing;</u>	265
<u>(G) Identify, examine, and report on any federal or state</u>	266
<u>government grant or loan program that would promote the</u>	267
<u>deployment of tier two broadband infrastructure and technology</u>	268
<u>in the state;</u>	269
<u>(H) Track the availability, location, rates and speeds,</u>	270
<u>and adoption of programs that offer tier one broadband service</u>	271
<u>and tier two broadband service in an affordable manner to low-</u>	272
<u>income consumers in this state.</u>	273
<u>Sec. 122.408.</u> <u>The broadband expansion program authority</u>	274
<u>shall conduct hearings to gather information necessary to</u>	275
<u>accomplish the duties specified under section 122.407 of the</u>	276

Revised Code. 277

Sec. 122.4010. The broadband expansion program authority, 278
upon majority approval of the authority's members, shall submit 279
a written public report of its findings and recommendations to 280
the governor and the general assembly not later than the first 281
of December of each calendar year. 282

The authority shall not disclose any proprietary 283
information or trade secrets in the report. Copies of the report 284
shall be available on the development services agency's web 285
site. 286

Sec. 122.4013. A broadband provider may apply for a 287
program grant under the Ohio residential broadband expansion 288
grant program. 289

Sec. 122.4015. Program grants under the Ohio residential 290
broadband expansion grant program shall be awarded only for 291
eligible projects. 292

Sec. 122.4016. An application shall be ineligible for a 293
program grant under the Ohio residential broadband expansion 294
grant program if either of the following applies: 295

(A) It proposes to provide tier two broadband service to 296
areas where tier two broadband service is presently available. 297

(B) In the proposed area of service, construction of a 298
network to provide tier two broadband service currently is in 299
progress and one of the following applies: 300

(1) It is being constructed, without grant program 301
funding, by the broadband provider that submitted the 302
application. 303

(2) It is scheduled to be completed by another broadband 304

provider not later than two years after the date of a challenge 305
submitted under section 122.4030 of the Revised Code. 306

Sec. 122.4017. The broadband expansion program authority 307
shall award program grants under the Ohio residential broadband 308
expansion grant program using funds from the Ohio residential 309
broadband expansion grant program fund created in section 310
122.4037 of the Revised Code. 311

Sec. 122.4018. (A) Each fiscal year, the development 312
services agency shall fund program grants until funds for that 313
fiscal year are no longer available. 314

(B) Any application pending at the end of the fiscal year 315
shall be deemed denied, but may be refiled in a subsequent 316
fiscal year provided that all information in the application is 317
still current or has been updated. 318

Sec. 122.4019. (A) (1) Each fiscal year, the development 319
services agency shall accept applications for program grants. 320

(2) To apply for a program grant, a broadband provider 321
shall submit an application to the agency on a form prescribed 322
by the agency and shall provide the information required under 323
section 122.4020 of the Revised Code. The form shall include a 324
statement informing the applicant that failure to comply with 325
the program or to meet the required tier two broadband service 326
proposed in the application may require the refund of all or a 327
portion of the program grant awarded for the project. 328

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

(B) Applications shall be accepted during a submission 332
period specified by the broadband expansion program authority. 333

Each submission period shall be at least sixty but not more than 334
ninety days. Each fiscal year there shall be not more than two 335
submission periods. 336

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

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

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

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

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

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

(2) Not later than fourteen days after the end of the 361
submission period described under division (B) of this section, 362

if the agency, for good cause shown, has granted the broadband provider an extension period of not more than fourteen days in which to file the completed application. 363
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(F) The agency shall deny an incomplete application if the broadband provider fails to complete and refile it within the applicable submission period or extension period. Applications that are denied shall not be published on the agency's web site. 366
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Sec. 122.4020. (A) An application for a program grant under the Ohio residential broadband expansion grant program shall include, at a minimum, the following information for an eligible project: 370
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(1) The location and description of the project, including: 374
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(a) The residential addresses in the unserved or tier one areas where tier two broadband service will be available following completion of the project; 376
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(b) A notarized letter of intent that the broadband provider will provide access to tier two broadband service to all of the residential addresses listed in the project; 379
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(c) A notarized letter of intent by the broadband provider that none of the funds provided by the program grant will be used to extend or deploy facilities to any residences other than those in the unserved or tier one areas that are part of the project. 382
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(2) The amount of the broadband funding gap and the amount of state funds requested; 387
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(3) The amount of any financial or in-kind contributions to be used towards the broadband funding gap and identification 389
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<u>of the contribution sources, which may include, but are not</u>	391
<u>limited to, any combination of the following:</u>	392
<u>(a) Funds that the broadband provider is willing to</u>	393
<u>contribute to the broadband funding gap;</u>	394
<u>(b) Funds received or approved under any other federal or</u>	395
<u>state government grant or loan program;</u>	396
<u>(c) General revenue funds of a municipal corporation,</u>	397
<u>township, or county comprising the area of the eligible project;</u>	398
<u>(d) Other discretionary funds of the municipal</u>	399
<u>corporation, township, or county comprising the area of the</u>	400
<u>eligible project;</u>	401
<u>(e) Any alternate payment terms that the broadband</u>	402
<u>provider and any legislative authority in which the project is</u>	403
<u>located have negotiated and agreed to pursuant to section</u>	404
<u>122.4025 of the Revised Code;</u>	405
<u>(f) Contributions or grants from individuals,</u>	406
<u>organizations, or companies;</u>	407
<u>(g) Property tax assessments made by the municipal</u>	408
<u>corporation under Chapter 727. of the Revised Code, township</u>	409
<u>under section 505.881 of the Revised Code, or county under</u>	410
<u>section 303.251 of the Revised Code.</u>	411
<u>(4) The source and amount of any financial or in-kind</u>	412
<u>contributions received or approved for any part of the overall</u>	413
<u>eligible project cost, but not applied to the broadband funding</u>	414
<u>gap;</u>	415
<u>(5) A description of, or documentation demonstrating, the</u>	416
<u>broadband provider's managerial and technical expertise and</u>	417
<u>experience with broadband service projects;</u>	418

<u>(6) Whether the broadband provider plans to use wired,</u>	419
<u>wireless, or satellite technology to complete the project;</u>	420
<u>(7) A description of the scalability of the project;</u>	421
<u>(8) The megabit-per-second broadband download and upload</u>	422
<u>speeds planned for the project;</u>	423
<u>(9) A description of the broadband provider's customer</u>	424
<u>service capabilities, including any locally based call centers</u>	425
<u>or customer service offices;</u>	426
<u>(10) A copy of the broadband provider's general customer</u>	427
<u>service policies, including any policy to credit customers for</u>	428
<u>service outages or the provider's failure to keep scheduled</u>	429
<u>appointments for service;</u>	430
<u>(11) The length of time that the broadband provider has</u>	431
<u>been operating in the state;</u>	432
<u>(12) Proof that the broadband provider has the financial</u>	433
<u>stability to complete the project;</u>	434
<u>(13) A projected construction timetable, including the</u>	435
<u>anticipated date of the provision of tier two broadband service</u>	436
<u>access within the project;</u>	437
<u>(14) A description of anticipated or preliminary</u>	438
<u>government authorizations, permits, and other approvals required</u>	439
<u>in connection with the project, and an estimated timetable for</u>	440
<u>the acquisition of such approvals;</u>	441
<u>(15) A notification from the broadband provider informing</u>	442
<u>the development services agency of any information contained in</u>	443
<u>the application, or within related documents submitted with it,</u>	444
<u>that the provider considers proprietary or a trade secret;</u>	445

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

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

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

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

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

Sec. 122.4021. As a condition for receiving a program 466
grant under the Ohio residential broadband expansion grant 467
program, the broadband expansion program authority may require a 468
broadband provider that is awarded a program grant to provide a 469
performance bond, letter of credit, or other financial assurance 470
acceptable to the authority prior to the commencement of 471
construction. The bond, letter of credit, or assurance shall be 472
in the sum, and with the sureties, that the state prescribes and 473
shall be payable to the state, as applicable. 474

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

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

Sec. 122.4023. Pursuant to rules adopted under section 482
122.4077 of the Revised Code, the development services agency 483
shall evaluate the information and documents submitted by a 484
broadband provider in an application under section 122.4013 of 485
the Revised Code or by a challenging provider under section 486
122.4030 of the Revised Code. The evaluation shall determine 487
whether the information and documents are proprietary or 488
constitute a trade secret. Upon receipt of the information and 489
documents, the agency shall keep them confidential and shall not 490
publish them on the agency's web site, unless the agency finds 491
that any information or document is not proprietary or a trade 492
secret. Any information or document found not to be proprietary 493
or a trade secret under this section shall not be considered 494
confidential and shall be published on the agency web site as is 495
required for an application under division (C) (2) of section 496
122.4019 of the Revised Code. 497

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

Sec. 122.4025. A broadband provider may enter into an 504

arrangement to designate video service provider fees remitted by 505
the broadband provider for contribution towards an eligible 506
project's broadband funding gap under the following 507
circumstances: 508

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

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

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

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

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

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

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

(2) The challenging provider shall provide, by certified 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. 534
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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. 542
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Sec. 122.4031. (A) To successfully challenge an application, a challenging provider shall provide sufficient evidence to the development services agency demonstrating that all or part of a project under the application is ineligible for a grant. The challenge shall, at minimum, include the following information: 546
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(1) Sufficient evidence disputing the notarized letter of intent submitted with the application that the eligible project contains unserved or tier one areas; 552
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(2) Sufficient evidence attesting to the challenging provider's existing or planned offering of tier two broadband service to all or part of the eligible project, which evidence shall include the following: 555
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(a) With regard to existing tier two broadband service, a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider offers broadband 559
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<u>service;</u>	563
<u>(b) With regard to the planned provision of tier two</u>	564
<u>broadband service by a challenging provider as described in</u>	565
<u>division (B) of section 122.4016 of the Revised Code, both of</u>	566
<u>the following:</u>	567
<u>(i) A signed, notarized statement submitted by the</u>	568
<u>challenging provider that sufficiently identifies the part of</u>	569
<u>the eligible project to which the challenging provider will</u>	570
<u>offer broadband service;</u>	571
<u>(ii) A summary of the construction efforts that includes</u>	572
<u>the dates when tier two broadband construction is expected to be</u>	573
<u>completed and when tier two broadband service will first be</u>	574
<u>offered to the part of the eligible project being challenged.</u>	575
<u>(B) To demonstrate that all or part of a project under the</u>	576
<u>application is ineligible for a grant, a challenging provider</u>	577
<u>may present shapefile data, residential addresses, maps, or</u>	578
<u>similar geographic details. Census block or census tract level</u>	579
<u>data shall not be acceptable as evidence of ineligibility of all</u>	580
<u>or part of a project.</u>	581
<u>Sec. 122.4033.</u> (A) <u>Not later than thirty days after</u>	582
<u>receipt of a challenge under sections 122.4030 to 122.4035 of</u>	583
<u>the Revised Code, the broadband expansion program authority may</u>	584
<u>do either of the following:</u>	585
<u>(1) Suspend, subject to division (B) of this section, all</u>	586
<u>or part of the application;</u>	587
<u>(2) Reject the challenge, approve the application, and</u>	588
<u>proceed with the application process.</u>	589
<u>(B) The authority shall allow the broadband provider that</u>	590

submitted the application being challenged to revise the 591
application consistent with sections 122.40 to 122.4077 of the 592
Revised Code, if the authority upholds a challenge to all or 593
part of the application. 594

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

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

(B) When revising the application, the broadband provider 610
shall not expand the scope or impact of the original 611
application, nor shall the provider add any new residential 612
addresses to the eligible project. 613

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

122.4023 of the Revised Code is redacted. 621

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

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

Sec. 122.4036. If the broadband expansion program 637
authority upholds a challenge to an application under sections 638
122.4030 to 122.4035 of the Revised Code and the challenging 639
provider fails to provide tier two broadband service as 640
described in the challenge, the challenging provider, after a 641
reasonable opportunity to be heard, may be required to do either 642
or both of the following, in addition to being subject to other 643
remedies available under the law: 644

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

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

the authority. 650

Sec. 122.4037. Any money collected under section 122.4036 651
of the Revised Code and funds appropriated for the Ohio 652
residential broadband expansion grant program shall be deposited 653
into the Ohio residential broadband expansion grant program 654
fund, which is hereby created in the state treasury. All amounts 655
in the fund, including interest earned on those amounts, shall 656
be used by the development services agency exclusively for 657
grants under sections 122.40 to 122.4077 of the Revised Code. 658

Sec. 122.4040. The development services agency, in 659
consultation with the broadband expansion program authority, 660
shall establish a weighted scoring system to evaluate and select 661
applications for program grants. The scoring system shall be 662
available on the agency's web site at least thirty days before 663
the beginning of the application submission period set by the 664
agency by rule. 665

Sec. 122.4041. (A) The scoring system established under 666
section 122.4040 of the Revised Code shall prioritize 667
applications, from highest to lowest weight, in the following 668
order: 669

(1) Eligible projects for unserved areas, rather than tier 670
one areas; 671

(2) Eligible projects located within distressed areas as 672
defined under section 122.19 of the Revised Code; 673

(3) Eligible projects that are receiving or have been 674
approved to receive any financial or in-kind contributions 675
towards the broadband funding gap identified in the application 676
under division (A) (3) of section 122.4020 of the Revised Code, 677
including the amounts and proportions of the contributions; 678

(4) Eligible projects for which the proposed construction will utilize state rights-of-way or otherwise require attachment to, or use of, public facilities or conduit to provide tier two broadband service to an eligible project; 679
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(5) Eligible projects based on proposed upstream and downstream speeds and the scalability of the tier two broadband service infrastructure proposed to be deployed to speeds higher than twenty-five megabits per second downstream and three megabits per second upstream; 683
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(6) Eligible projects based on each of the following, in equal measure, without favoring one broadband provider over another: 688
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(a) Demonstrated support, supported by evidence, for community and economic development efforts in, or adjacent to, 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; 691
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(b) The broadband provider's experience, technical ability, and financial capability in successfully deploying and providing tier two broadband service; 696
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(c) The length of time the broadband provider has been providing tier two broadband service in the state; 699
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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; 701
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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; 704
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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; 708
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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. 712
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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. 715
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Sec. 122.4043. (A) The broadband expansion program authority shall award program grants under the Ohio residential broadband expansion grant program after reviewing applications sent to the authority by the development services agency. Awards shall be granted after the authority scores applications based on the scoring system under sections 122.4040 and 122.4041 of the Revised Code. 722
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(B) In awarding program grants, the authority shall consider all regulatory obligations under applicable law. The authority may not consider any of the following: 729
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(1) Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified for the Ohio residential broadband expansion grant program; 732
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(2) Factors that would constrain a broadband provider that 736

receives a grant from offering or providing tier two broadband 737
service in the same manner as the service is offered by 738
broadband providers in other areas of the state without funding 739
from the Ohio residential broadband expansion grant program. 740

(C) Upon making the program grant awards, the authority 741
shall notify the broadband providers that submitted applications 742
of the award decisions. The authority shall publish the program 743
grant awards on the agency's web site. 744

Sec. 122.4044. After the broadband expansion program 745
authority awards a program grant under section 122.4043 of the 746
Revised Code, the development services agency shall disburse the 747
program grant as follows: 748

(A) A portion of the program grant, not to exceed thirty 749
per cent, shall be disbursed before construction of the project 750
begins. 751

(B) A portion of the program grant, not to exceed sixty 752
per cent, shall be disbursed through periodic payments over the 753
course of construction of the eligible project as determined by 754
the agency by rules adopted under section 122.4077 of the 755
Revised Code. 756

(C) The remaining portion shall be disbursed not later 757
than sixty days after the broadband provider notifies the 758
authority that it has completed construction of the project. 759

Sec. 122.4045. (A) The development services agency may, 760
through an independent third party, conduct speed verification 761
tests of an eligible project that receives a program grant. Such 762
tests shall occur as follows: 763

(1) After the construction is complete, but prior to the 764
final disbursement made under division (C) of section 122.4044 765

of the Revised Code to verify that tier two broadband service is 766
being offered; 767

(2) At any time during the reporting period required under 768
division (B) of section 122.4070 of the Revised Code, after 769
receiving a complaint concerning a residence that is part of the 770
eligible project. 771

(B) To evaluate compliance with tier two broadband service 772
standards, speed verification tests conducted under this section 773
shall be conducted on at least two different days and at two 774
different times on each of those days. 775

(C) The agency may withhold payments under this section 776
for failure to meet at least the minimum speeds required under 777
division (A) (8) of section 122.4020 of the Revised Code. 778
Payments may be held until such speeds are achieved. 779

Sec. 122.4046. (A) If the development services agency 780
determines that a broadband provider that has been awarded a 781
program grant under the Ohio residential broadband expansion 782
grant program has not complied with the requirements of the 783
program, the agency shall notify the provider of the 784
noncompliance. In accordance with rules adopted by the agency 785
under section 122.4077 of the Revised Code, the agency shall 786
give the provider an opportunity to explain or cure the 787
noncompliance. 788

(B) After reviewing the broadband provider's explanation 789
or effort to cure the noncompliance, the following shall apply: 790

(1) The agency may require the provider to refund an 791
amount equal to all, or a portion of, the amount of the program 792
grant awarded to the provider, as determined by the agency. 793

(2) The agency may require the broadband provider to 794

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

(C) Not more than thirty days after the agency's decision 800
requiring a refund for program noncompliance or a failure to 801
explain or cure it, the broadband provider shall pay the refund 802
required under division (B) of this section. Payments shall be 803
made directly to the municipal corporation, township, or county 804
that contributed funds toward the broadband funding gap. 805

Sec. 122.4050. Upon adoption of a resolution, a board of 806
county commissioners may request the development services agency 807
to solicit applications from broadband providers for program 808
grants under the Ohio residential broadband expansion grant 809
program for eligible projects in the municipal corporations and 810
townships of the county. 811

A request made by a county shall identify, to the extent 812
possible, the residential addresses in unserved or tier one 813
areas of the county and provide a point of contact at the county 814
and the municipal corporations and townships in which the 815
addresses are located. The request may include any relevant 816
information, documents, or materials that may be helpful for an 817
application. 818

Sec. 122.4051. Upon receipt of a request from a board of 819
county commissioners pursuant to section 122.4050 of the Revised 820
Code, the development services agency shall solicit, on behalf 821
of the county, applications for program grants for eligible 822
projects under the Ohio residential broadband expansion grant 823
program. Not later than seven days after receipt of the request, 824

the agency shall make the request, and any accompanying 825
information submitted with the request, available for review on 826
the agency's web site. The request shall remain available on the 827
web site for a period not to exceed two years. 828

Sec. 122.4053. An application for a program grant under 829
the Ohio residential broadband expansion grant program made in 830
response to a request under section 122.4050 of the Revised Code 831
shall fully comply with all of the program requirements. Nothing 832
in sections 122.4050, 122.4051, and 122.4053 of the Revised Code 833
shall be construed as providing relief from compliance with any 834
program requirements. 835

Sec. 122.4055. The development services agency shall not 836
be responsible for any failure by a broadband provider to 837
respond to a request made by the agency pursuant to section 838
122.4051 of the Revised Code or to submit an application for a 839
program grant under the Ohio residential broadband expansion 840
grant program. 841

Sec. 122.4060. (A) An eligible project shall not proceed 842
unless the broadband expansion program authority awards a 843
program grant under section 122.4043 of the Revised Code. 844

(B) After receiving a program grant award, the broadband 845
provider shall construct and install last mile broadband 846
infrastructure to the eligible project. 847

Sec. 122.4061. Under alternate payment term arrangements 848
made under section 122.4025 of the Revised Code, unless 849
otherwise negotiated, the participating legislative authorities 850
in which the eligible project is located shall assume all 851
financial responsibility for all of the eligible project costs 852
incurred by the broadband provider prior to completion of the 853

project or the award of a program grant. 854

Sec. 122.4063. (A) Nothing in sections 122.40 to 122.4077 855
of the Revised Code entitles the state of Ohio, the development 856
services agency, the broadband expansion program authority, or 857
any other governmental entity to any ownership or other rights 858
to broadband infrastructure constructed by a broadband provider 859
pursuant to a program grant awarded to an eligible project. 860

(B) Nothing in sections 122.40 to 122.4077 of the Revised 861
Code prevents an assignment, sale, change in ownership, or other 862
similar transaction associated with broadband infrastructure 863
constructed by a broadband provider pursuant to a program grant 864
awarded to an eligible project. No assignment, sale, change in 865
ownership, or other similar transaction relieves the successor 866
of any obligation under sections 122.40 to 122.4077 of the 867
Revised Code. 868

Sec. 122.4070. (A) Each broadband provider that receives a 869
program grant shall submit to the development services agency an 870
annual progress report on the status of the deployment of the 871
broadband network described in the eligible project for which 872
the program grant award was made. 873

(B) The broadband provider shall submit an operational 874
report with the agency not later than sixty days after the 875
completion of the project and annually thereafter for a period 876
of four years. 877

Sec. 122.4071. (A) The reports required under section 878
122.4070 of the Revised Code and except as provided in section 879
122.4075 of the Revised Code, all information and documents in 880
them shall be in a format specified by the development services 881
agency and shall be publicly available on the agency's web site. 882

(B) In each report, the broadband provider shall include an account of how program grant funds have been used and the project's progress toward fulfilling the objectives for which the program grant was awarded. The reports, at a minimum, shall include the following: 883
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(1) The number of residences that have access to tier two broadband services as a result of the eligible project; 888
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(2) The number of commercial and nonresidential entities that are not funded directly by the grant program but have access to tier two broadband service as a result of the eligible project; 890
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(3) The upstream and downstream speed of the broadband service provided; 894
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(4) The average price of broadband service; 896

(5) The number of broadband service subscriptions attributable to the program grant. 897
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Sec. 122.4073. The development services agency may set a due date for the reports required under section 122.4070 of the Revised Code and, for good cause shown, may grant extensions of the report due dates. 899
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Sec. 122.4075. Reports required under section 122.4070 of the Revised Code, and all information and documents in them, shall be maintained on a confidential basis by the development services agency and shall not be published on the agency's web site until the agency determines what information or documents are not confidential pursuant to section 122.4023 of the Revised Code. 903
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Sec. 122.4076. (A) The broadband expansion program 910

authority shall complete an annual report for the Ohio residential broadband expansion grant program. The report shall evaluate the success of the program grants awarded under section 122.4043 of the Revised Code in making tier two broadband services available to unserved and tier one areas. The report shall include the following information: 911
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(1) The number of applications received; 917

(2) The number of applications that received program grants; 918
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(3) The amount of broadband infrastructure constructed for eligible projects; 920
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(4) The number of residences receiving, for that year, tier two broadband service for the first time under the program; 922
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(5) Findings and recommendations that have been agreed to by a majority of the authority members. 924
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(B) The report shall be published on the development services agency's web site and shall be included as part of the agency's annual report filed under section 121.18 of the Revised Code. The authority shall present the report annually to the governor and the general assembly not later than the first of December of each calendar year. 926
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Sec. 122.4077. (A) The development services agency shall adopt rules for the Ohio residential broadband expansion grant program. The rules shall establish an application form and application procedures for the program and procedures for periodic program grant disbursements. 932
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(B) The rules may include the following: 937

(1) Requirements for a program application in addition to 938

<u>the requirements described in section 122.4020 of the Revised</u>	939
<u>Code;</u>	940
<u>(2) Procedures for and circumstances under which partial</u>	941
<u>funding of applications is permitted;</u>	942
<u>(3) Procedures for broadband expansion program authority</u>	943
<u>meetings, extension periods for applications and application</u>	944
<u>challenges, hearings, and opportunities for public comment.</u>	945
<u>(C) The agency may adopt rules and procedures to implement</u>	946
<u>sections 122.4051, 122.4053, and 122.4055 of the Revised Code.</u>	947
<u>(D) Rules adopted under this section are not subject to</u>	948
<u>section 121.95 of the Revised Code.</u>	949
<u>(E) The agency and the authority are not subject to</u>	950
<u>division (F) of section 121.95 of the Revised Code regarding the</u>	951
<u>development and adoption of rules pursuant to this section.</u>	952
Sec. 133.13. If the special assessments are to be paid in	953
one annual installment, the taxing authority of a subdivision	954
may issue securities in anticipation of its levy or collection	955
of special assessments to pay the costs of <u>the subdivision's</u>	956
<u>broadband funding gap portion for an eligible project under</u>	957
<u>sections 122.40 to 122.4077 of the Revised Code, lighting,</u>	958
sprinkling, sweeping, cleaning, providing related or similar	959
services or the services described in section 727.011 of the	960
Revised Code, or of removing snow, ice, and debris from, or	961
treating the surface of, streets, alleys, and public ways and	962
places.	963
Such securities shall not be general obligations of the	964
issuing subdivision, and shall not pledge to the payment of debt	965
charges any receipts other than the special assessments	966
anticipated, except that a municipal corporation, without	967

incurring debt subject to direct or indirect debt limitations, 968
may also pledge and apply proceeds of its municipal income tax 969
to pay those debt charges. No property tax shall be levied or 970
pledged for the payment of debt charges on the securities. The 971
securities shall mature no later than the last day of December 972
of the year in which the special assessments anticipated are 973
scheduled to be collected. 974

The legislation authorizing the securities shall 975
appropriate the special assessments anticipated, and such 976
special assessments shall be deemed to be pledged and 977
appropriated, first to the payment of the debt charges on the 978
securities. After provision has been made for the payment in 979
full of those debt charges, the balance of the special 980
assessments may be appropriated and applied for the purposes for 981
which they were levied. 982

Sec. 188.01. As used in sections 188.01 to 188.23 of the 983
Revised Code: 984

(A) "Broadband service" means any wholesale or retail 985
service that consists of, or includes the provision of, 986
connectivity to a high-speed, high-capacity transmission medium 987
that can carry signals from or to multiple sources and that 988
either provides access to the internet or provides computer 989
processing, information storage, information content or protocol 990
conversion, including any service applications or information 991
service provided over such high-speed access service. "Broadband 992
service" includes video service, voice over internet protocol 993
service, and internet protocol-enabled services. 994

(B) "Electric cooperative" has the same meaning as in 995
section 4928.01 of the Revised Code. 996

(C) "Internet protocol-enabled services" and "voice over internet protocol service" have the same meanings as in section 4927.01 of the Revised Code. 997
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(D) "Servient estate" means the land burdened by an easement. 1000
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(E) "Video programming" means any programming generally considered comparable to programming provided by a television broadcast station. 1002
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(F) "Video service" means video programming services without regard to delivery technology, including internet protocol technology and video programming provided as a part of a service that enables users to access content, information, electronic mail, or other services offered over the public internet. 1005
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Sec. 188.02. An easement granted to an electric cooperative for purposes of transmitting, delivering, or otherwise providing electric power may be used, apportioned, or subleased to provide broadband service and such use, apportionment, or sublease shall not be considered an additional burden on the servient estate. 1011
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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: 1017
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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; 1023
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(2) The fair market value of the owner's interest in the 1026
property of the estate immediately after the provision of 1027
broadband service. 1028

(B) Any damages awarded under division (A) of this section 1029
shall be a fixed amount that shall not continue, accumulate, or 1030
accrue. 1031

(C) The values described in division (A) of this section 1032
shall be established by the testimony of a qualified real estate 1033
appraiser. 1034

Sec. 188.08. The court may not grant injunctive relief or 1035
any other equitable relief for an action described in section 1036
188.05 of the Revised Code. 1037

Sec. 188.11. Actions described in section 188.05 of the 1038
Revised Code shall be brought within one year of any alleged 1039
damage described in that section. Any action not brought within 1040
one year will result in forfeiture of that claim. 1041

Sec. 188.14. Past, current, or future revenues or profits 1042
derived or to be derived from the use, apportionment, or 1043
sublease of an easement for broadband service are not admissible 1044
for any purpose in an action described in section 188.05 of the 1045
Revised Code. 1046

Sec. 188.17. Any court determination regarding an easement 1047
subject to an action described in section 188.05 of the Revised 1048
Code shall be considered a finding that the provision of 1049
broadband service is an allowable use or purpose under the 1050
easement as if the use or purpose was specifically stated in the 1051
terms of the easement. 1052

Sec. 188.20. A court determination described in section 1053
188.17 of the Revised Code shall be filed by the defendant in 1054

the action with the county recorder of the county in which the 1055
servient estate subject to the determination is located. The 1056
recorder shall make a notation in the official record that links 1057
the determination to the servient estate and the easement 1058
subject to the determination. 1059

Sec. 188.23. The owner of a servient estate of an easement 1060
described in section 188.02 of the Revised Code may not bring an 1061
action described in section 188.05 of the Revised Code if any of 1062
the following apply: 1063

(A) The owner, either directly or through the owner's 1064
membership in the electric cooperative or otherwise, authorized 1065
the electric cooperative's electric delivery system for the 1066
provision of broadband services. 1067

(B) The owner, or any of the previous owners of the 1068
property that makes up the servient estate, has agreed to, or 1069
granted permission for, the use of the easement to provide 1070
broadband service. 1071

(C) The facilities providing broadband service are used or 1072
are capable of being used to assist in the transmission, 1073
delivery, or use of electric service. 1074

Sec. 188.27. Sections 188.01 to 188.23 of the Revised Code 1075
shall not be construed as expanding the authority of the state, 1076
its agencies, or political subdivisions beyond the authority 1077
existing under federal law or the laws of this state. 1078

Sec. 188.30. Sections 163.01 to 163.22 of the Revised Code 1079
do not apply regarding the application of sections 188.01 to 1080
188.23 of the Revised Code. 1081

Sec. 303.251. (A) If a program grant is awarded for an 1082
eligible project under sections 122.40 to 122.4077 of the 1083

Revised Code, the board of county commissioners of the county in 1084
which the project is situated, by resolution, may levy a special 1085
assessment upon residential property within the county for the 1086
purpose of providing a contribution from the county towards the 1087
funding gap for the eligible project. Assessments under this 1088
section shall be levied only upon the residential property that 1089
is subject to the eligible project. Before adopting the 1090
resolution, the board shall send written notice to each affected 1091
property owner stating the estimated assessment for that 1092
property. If an owner objects to the stated estimated 1093
assessment, the owner shall file a written objection with the 1094
board not later than two weeks after the notice is mailed. The 1095
board shall review the written objections and may revise the 1096
estimated assessments before adopting the resolution. If the 1097
property owner objects to the final assessment for the property 1098
levied in the resolution, the owner may appeal the final 1099
assessment under Chapter 2506. of the Revised Code. 1100

(B) The assessment shall be at a rate that will produce a 1101
total assessment that is not more than the county's contribution 1102
towards the funding gap for the eligible project as described in 1103
the application under section 122.4020 of the Revised Code. The 1104
board shall certify the amount to be levied upon each affected 1105
property to the county auditor, who shall enter the amount on 1106
the tax duplicate for collection by the county treasurer in 1107
equal semiannual installments in the same manner and at the same 1108
times as the collection of taxes on real property. Assessments 1109
shall be paid by owners of the properties upon which assessments 1110
are levied. 1111

(C) The assessments, when collected, shall be paid by the 1112
county auditor by warrant on the county treasurer into a special 1113
fund in the county treasury created for the purpose of funding 1114

an eligible project for which a program grant is awarded under 1115
sections 122.40 to 122.4077 of the Revised Code and that is 1116
located in the county. The board may expend moneys from the fund 1117
only for the purposes for which the assessments were levied. 1118

Sec. 505.881. (A) If a program grant is awarded for an 1119
eligible project under sections 122.40 to 122.4077 of the 1120
Revised Code, the board of township trustees in which the 1121
project is situated, by resolution, may levy a special 1122
assessment upon residential property within the township for the 1123
purpose of providing a contribution from the township towards 1124
the broadband funding gap for the eligible project. Assessments 1125
under this section shall be levied only upon the residential 1126
property that is subject to the eligible project. Before 1127
adopting the resolution, the board shall send written notice to 1128
each affected property owner stating the estimated assessment 1129
for that property. If an owner objects to the stated estimated 1130
assessment, the owner shall file a written objection with the 1131
board not later than two weeks after the notice is mailed. The 1132
board shall review the written objection and may revise the 1133
estimated assessment before adopting the resolution. If the 1134
property owner objects to the final assessment for the property 1135
levied in the resolution, the owner may appeal the final 1136
assessment under Chapter 2506. of the Revised Code. 1137

(B) The assessment shall be at a rate that will produce a 1138
total assessment that is not more than the township's 1139
contribution towards the funding gap for the eligible project as 1140
described in the application under section 122.4020 of the 1141
Revised Code. The board shall certify the amount to be levied 1142
upon each affected property to the county auditor, who shall 1143
enter the amount on the tax duplicate for collection by the 1144
county treasurer in equal semiannual installments in the same 1145

manner and at the same times as the collection of taxes on real 1146
property. Assessments shall be paid by owners of the properties 1147
upon which assessments are levied. 1148

(C) The assessments, when collected, shall be paid by the 1149
county auditor by warrant on the county treasurer into a special 1150
fund in the township treasury created for the purpose of funding 1151
an eligible project for which a program grant is awarded under 1152
sections 122.40 to 122.4077 of the Revised Code and that is 1153
located in the township. The board may expend moneys from the 1154
fund only for the purposes for which the assessments were 1155
levied. 1156

Sec. 727.01. Each municipal corporation shall have special 1157
power to levy and collect special assessments. The legislative 1158
authority of a municipal corporation may assess upon the 1159
abutting, adjacent, and contiguous, or other specially 1160
benefited, lots or lands in the municipal corporation, any part 1161
of the cost connected with the improvement of any street, alley, 1162
dock, wharf, pier, public road, place, boulevard, parkway, or 1163
park entrance or an easement of the municipal corporation 1164
available for the purpose of the improvement to be made in it by 1165
grading, draining, curbing, paving, repaving, repairing, 1166
treating the surface with substances designed to lay the dust on 1167
it or preserve it, constructing sidewalks, piers, wharves, 1168
docks, retaining walls, sewers, sewage disposal works and 1169
treatment plants, sewage pumping stations, water treatment 1170
plants, water pumping stations, reservoirs, and water storage 1171
tanks or standpipes, together with the facilities and 1172
appurtenances necessary and proper therefor, drains, storm-water 1173
retention basins, watercourses, water mains, or laying of water 1174
pipe, or the lighting, sprinkling, sweeping, or cleaning 1175
thereof, or removing snow therefrom, any part of the cost and 1176

expense of planting, maintaining, and removing shade trees 1177
thereupon; any part of the cost of a voluntary action, as 1178
defined in section 3746.01 of the Revised Code, undertaken 1179
pursuant to Chapter 3746. of the Revised Code by a special 1180
improvement district created under Chapter 1710. of the Revised 1181
Code, including the cost of acquiring property with respect to 1182
which the voluntary action is undertaken; any part of the cost 1183
and expense of constructing, maintaining, repairing, cleaning, 1184
and enclosing ditches; any part of the cost and expense of 1185
operating, maintaining, and replacing heating and cooling 1186
facilities for enclosed pedestrian canopies and malls; any part 1187
of the cost and expense of acquiring and improving parking 1188
facilities and structures for off-street parking of motor 1189
vehicles or of acquiring land and improving it by clearing, 1190
grading, draining, paving, lighting, erecting, constructing, and 1191
equipping it for parking facilities and structures for off- 1192
street parking of motor vehicles, to the extent authorized by 1193
section 717.05 of the Revised Code, but only if no special 1194
assessment made for the purpose of developing off-street parking 1195
facilities and structures is levied against any land being used 1196
solely for off-street parking or against any land used solely 1197
for single or two-family dwellings; any part of the cost and 1198
expense of operating and maintaining the off-street parking 1199
facilities and structures; and any part of the cost connected 1200
with changing the channel of, or narrowing, widening, dredging, 1201
deepening, or improving, any stream or watercourse, and for 1202
constructing or improving any levees or boulevards on any stream 1203
or watercourse, or along or about any stream or watercourse, 1204
together with any retaining wall, riprap protection, bulkhead, 1205
culverts, approaches, flood gates, waterways, or drains 1206
incidental to any stream or watercourse, or for making any other 1207
improvement of any river or lake front, whether it is privately 1208

or publicly owned, which the legislative authority declares 1209
conducive to the public health, convenience, or welfare. If a 1210
program grant is awarded for an eligible project under sections 1211
122.40 to 122.4077 of the Revised Code, a municipal corporation 1212
may levy, against dwellings that are subject to the project, a 1213
special assessment for the purpose of providing a contribution 1214
from the municipal corporation towards the funding gap for the 1215
project. The assessment shall be at a rate that will produce a 1216
total assessment that is not more than the municipal 1217
corporation's contribution towards the funding gap for the 1218
eligible project as described in the application under section 1219
122.4020 of the Revised Code. In addition, a municipal 1220
corporation may levy a special assessment for public improvement 1221
or public services plans of a district formed under Chapter 1222
1710. of the Revised Code, as provided in that chapter. Except 1223
as otherwise provided in Chapter 1710. of the Revised Code, 1224
special assessments may be levied by any of the following 1225
methods: 1226

(A) By a percentage of the tax value of the property 1227
assessed; 1228

(B) In proportion to the benefits that may result from the 1229
improvement; 1230

(C) By the front foot of the property bounding and 1231
abutting upon the improvement. 1232

Sec. 4926.01. As used in sections 4926.01 to 4926.60 of 1233
the Revised Code: 1234

"Attachment" means any wire, wireless facility, cable, 1235
antennae facility, or apparatus for the transmission of text, 1236
signs, signals, pictures, sounds, or other forms of information 1237

installed by or on behalf of a provider upon any pole owned or 1238
controlled, in whole or in part, by one or more electric 1239
cooperatives. 1240

"Broadband provider" has the same meaning as in section 1241
122.40 of the Revised Code. 1242

"Electric cooperative" has the same meaning as in section 1243
4928.01 of the Revised Code. 1244

"Incremental cost" means pole attachment costs incurred by 1245
an electric cooperative for providing long-run service. 1246

"Make-ready work" means, as determined by the nature of 1247
the work required, "make-ready," "complex make-ready," or 1248
"simple make-ready" as those terms are defined in 47 C.F.R. 1249
1.1402. 1250

"Provider" means a broadband provider, telecommunications 1251
service provider, video service provider, or wireless service 1252
provider. 1253

"Telecommunications service provider" means a provider of 1254
"telecommunications service" as defined in section 4927.01 of 1255
the Revised Code. 1256

"Video service provider" has the same meaning as in 1257
section 1332.21 of the Revised Code. 1258

"Wireless service provider" has the same meaning as in 1259
section 4927.01 of the Revised Code. 1260

Sec. 4926.03. On the request of a provider, an electric 1261
cooperative shall grant the provider nondiscriminatory access to 1262
the cooperative's poles under just and reasonable rates, terms, 1263
and conditions for their attachments in accordance with sections 1264
4926.06 to 4926.36 of the Revised Code. 1265

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. 1266
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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. 1270
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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 of common pleas determines a different time frame for granting or denying access. 1276
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Sec. 4926.15. An electric cooperative may deny a provider access to its poles for either of the following reasons if the reasons are applied on a nondiscriminatory basis: 1282
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1284

(A) Insufficient capacity; 1285

(B) Safety, reliability, or generally applicable engineering standards. 1286
1287

Sec. 4926.18. If an electric cooperative denies an access request submitted under section 4926.15 of the Revised Code, the cooperative must confirm the denial in writing. The denial shall be specific and shall include all relevant evidence and information supporting the denial and an explanation of how that evidence and information relates to the factors described in section 4926.15 of the Revised Code on which the denial is 1288
1289
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based. 1295

Sec. 4926.21. (A) A provider and an electric cooperative 1296
shall comply with the process for make-ready work under 47 1297
U.S.C. 224 and the federal communications commission orders and 1298
regulations implementing that section, unless, pursuant to 1299
section 4926.57 of the Revised Code, a court of common pleas 1300
establishes a different process for make-ready work. 1301

(B) The cooperative shall provide a good-faith estimate 1302
for any make-ready work, which shall include pole replacement if 1303
necessary. All make-ready costs shall be based on the 1304
cooperative's actual costs not recovered through the annual 1305
recurring attachment rate. The cooperative shall provide 1306
detailed documentation of the actual costs. 1307

(C) A cooperative that charges an annual recurring 1308
attachment fee shall establish the fee in accordance with the 1309
cable pole attachment rate formula established in 47 U.S.C. 1310
224(d) and commission orders and regulations implementing that 1311
formula, unless, pursuant to section 4926.57 of the Revised 1312
Code, a court of common pleas establishes a different attachment 1313
fee. 1314

Sec. 4926.24. The attachment of facilities on the poles of 1315
an electric cooperative by a provider shall comply with the 1316
following: 1317

(A) The most recent, applicable, nondiscriminatory safety 1318
and reliability standards adopted by the cooperative; 1319

(B) The national electric safety code adopted by the 1320
institute of electrical and electronics engineers in effect on 1321
the date of the attachment. 1322

Sec. 4926.27. Nothing in sections 4926.01 to 4926.60 of 1323

the Revised Code affects a provider or other attaching party's 1324
obligation to obtain any necessary authorization before 1325
occupying public ways or private rights-of-way with its 1326
attachment. 1327

Sec. 4926.30. If an electric cooperative's pole facility 1328
is modified, a party with a preexisting attachment to the 1329
modified facility is considered to directly benefit from a 1330
modification if, after receiving notification of the 1331
modification, the party adds to or modifies its attachment. 1332

Sec. 4926.33. (A) If an electric cooperative's pole 1333
facility is modified, all parties that obtain access to the 1334
facility as a result of the modification and all parties that 1335
directly benefit from the modification shall share 1336
proportionately in the cost of the modification. 1337

(B) If a party makes an attachment to the facility after 1338
the completion of the modification, the party shall share 1339
proportionately in the costs of the modification if that 1340
modification rendered the added attachment possible. 1341

Sec. 4926.36. Unless a modification by an electric 1342
cooperative is necessary for an electric service that uses smart 1343
grid or other technology, a party with a preexisting attachment 1344
to a pole is not required to bear any of the costs of 1345
rearranging or replacing its attachment if the rearrangement or 1346
replacement is necessary because of another party's request for 1347
an additional attachment or a modification of an existing 1348
attachment. 1349

Sec. 4926.39. Subject to the venue requirements of 1350
section 4926.43 of the Revised Code, an electric cooperative or 1351
a provider may file a complaint regarding pole attachment 1352

disputes with respect to sections 4926.01 to 4926.60 of the 1353
Revised Code with the court of commons pleas of the county in 1354
which the cooperative's Ohio headquarters is located. 1355

Sec. 4926.42. Subject to the venue requirements of section 1356
4926.43 of the Revised Code, the court of common pleas of the 1357
county in which an electric cooperative's Ohio headquarters is 1358
located has jurisdiction to hear complaints and to grant 1359
remedies with respect to sections 4926.01 to 4926.60 of the 1360
Revised Code regarding attachment disputes for which a complaint 1361
is filed. 1362

Sec. 4926.43. A hearing regarding a complaint filed under 1363
section 4926.39 of the Revised Code is a special statutory 1364
proceeding under division (C) of Civil Rule 1 of the Rules of 1365
Civil Procedure. Any civil proceeding under section 4926.39 of 1366
the Revised Code shall be conducted in accordance with the Rules 1367
of Civil Procedure, except that a complaint regarding pole 1368
attachment disputes with respect to sections 4926.01 to 4926.60 1369
of the Revised Code is not subject to general venue provisions 1370
in Civil Rule 3 of the Rules of Civil Procedure. To that extent 1371
only, such proceedings shall be deemed a special statutory 1372
proceeding under division (C)(8) of Civil Rule 1 of the Rules of 1373
Civil Procedure. 1374

Venue for such a proceeding shall lie only in the county 1375
in which the cooperative's Ohio headquarters is located, 1376
provided that at least some portion of the attachment will occur 1377
in that county. In the event that the cooperative's Ohio 1378
headquarters is not located in a county in which some portion of 1379
the attachment will occur, or that more than one cooperative is 1380
a party, venue shall lie only in the county in which the largest 1381
physical portion of the attachment will occur. 1382

Court orders relative to venue are final orders pursuant 1383
to division (B) (2) of section 2505.02 of the Revised Code. 1384
Orders not specifically relating to venue are reviewable on 1385
appeal in the same manner as judgments in any civil action. 1386

Land acquisition actions pursuant to Chapter 163. of the 1387
Revised Code are not affected by this section and shall be heard 1388
in a venue as provided in that chapter or Civil Rule 3 of the 1389
Rules of Civil Procedure. 1390

Sec. 4926.45. Before a court of common pleas may order any 1391
remedy under section 4926.57 of the Revised Code regarding a 1392
pole attachment complaint filed with respect to sections 4926.01 1393
to 4926.60 of the Revised Code, the court shall determine, and a 1394
complainant shall establish, by a preponderance of the evidence, 1395
each of the following: 1396

(A) That any rate, term, or condition complained of is not 1397
just and reasonable or a denial of access was unlawful. 1398

(B) If the complaint concerns any rate, term, or 1399
condition, that such rate, term, or condition is contained in, 1400
or demanded by either party as a condition to entering into, 1401
either: 1402

(1) A new pole attachment agreement; or 1403

(2) An amendment, renewal, or replacement of an existing 1404
agreement that may be terminated, amended, renewed, or replaced 1405
on or after the effective date of this section; 1406

(C) If the complaint concerns any rate, term, or 1407
condition, that the provider and the electric cooperative first 1408
attempted to negotiate regarding the terms of a new, amended, 1409
renewed, or replaced agreement for a period of at least forty- 1410
five days prior to filing the complaint. 1411

Sec. 4926.48. (A) The complainant under section 4926.39 of 1412
the Revised Code has the burden of establishing a prima facie 1413
case that the rate, term, or condition complained of is not just 1414
and reasonable or that the denial of access was unlawful. 1415

(B) In a case involving a denial of access, the electric 1416
cooperative has the burden of establishing, by a preponderance 1417
of the evidence, that the denial was lawful, once a prima facie 1418
case is established by the complainant. 1419

Sec. 4926.51. In a complaint filed under section 4926.39 1420
of the Revised Code, if an electric cooperative claims that the 1421
proposed rate is lower than its incremental costs, the 1422
cooperative has the burden of establishing, by a preponderance 1423
of the evidence, its incremental costs. 1424

Sec. 4926.54. In a complaint filed under section 4926.39 1425
of the Revised Code, there is a rebuttable presumption that each 1426
of the following is just and reasonable: 1427

(A) The time frame to grant or deny access, if it is 1428
within the time frame established by the federal communications 1429
commission; 1430

(B) The process for make-ready work, if it is in 1431
accordance with the process for make-ready work under 47 U.S.C. 1432
224 and the federal communications commission orders and 1433
regulations implementing that section; 1434

(C) The charged rate, if the electric cooperative can show 1435
that its charged rate does not exceed an annual recurring 1436
attachment rate calculated in accordance with the cable pole 1437
attachment rate formula in 47 U.S.C. 224(d) and federal 1438
communications commission orders and regulations implementing 1439
that formula. 1440

Sec. 4926.57. (A) If, pursuant to a complaint filed under section 4926.39 of the Revised Code, a court of common pleas determines that any rate, term, or condition described in the complaint is not just and reasonable, it may do, but is not limited to doing, any of the following: 1441-1445

(1) Terminate the rate, term, or condition and prescribe a just and reasonable rate, term, or condition; 1446-1447

(2) Require entry into a pole attachment agreement on just and reasonable rates, terms, and conditions; 1448-1449

(3) Require access to poles as provided under sections 4926.06 to 4926.36 of the Revised Code; 1450-1451

(4) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the court; 1452-1454

(5) Order a refund or payment, as appropriate. 1455

(B) A refund or payment ordered under this section may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period described in the complaint, provided that the period during which refunds or payments are made does not exceed two years. 1456-1462

Sec. 4926.60. A court of common pleas determination resolving a complaint under sections 4926.39 to 4926.57 of the Revised Code shall be issued in the form of a final appealable order. 1463-1466

Section 2. That existing sections 133.13 and 727.01 of the Revised Code are hereby repealed. 1467-1468

Section 3. All items in this act are hereby appropriated 1469
as designated out of any moneys in the state treasury to the 1470
credit of the designated fund. For all operating appropriations 1471
made in this act, those in the first column are for fiscal year 1472
2022 and those in the second column are for fiscal year 2023. 1473
The operating appropriations made in this act are in addition to 1474
any other operating appropriations made for the FY 2022-FY 2023 1475
biennium. 1476

Section 4. 1477

1478

1	2	3	4	5
A		DEV DEVELOPMENT SERVICES AGENCY		
B	Facilities Establishment Fund Group			
C	5GTO 195550	Broadband Development Grants	\$20,000,000	\$0
D	TOTAL FCE Facilities Establishment Fund Group		\$20,000,000	\$0
E	TOTAL ALL BUDGET FUND GROUPS		\$20,000,000	\$0

BROADBAND DEVELOPMENT GRANTS 1479

Notwithstanding Chapter 166. of the Revised Code, the 1480
foregoing appropriation item 195550, Broadband Development 1481
Grants, shall be used for grants under the Ohio Residential 1482
Broadband Expansion Grant Program established in section 122.401 1483
of the Revised Code. 1484

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

Any unexpended and unencumbered portion of the foregoing appropriation item 195550, Broadband Development Grants, at the end of fiscal year 2022 is hereby reappropriated for the same purpose in fiscal year 2023.

Section 5. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from operating appropriations contained in this act shall be accounted for as though made in the main operating appropriations act of the 134th General Assembly. The operating appropriations made in this act are subject to all provisions of the main operating appropriations act of the 134th General Assembly that are generally applicable to such appropriations.