

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 190**

**Representative Smith, R.**

**Cosponsors: Representatives Keller, Koehler, Lang, Carfagna, McClain, O'Brien,  
Strahorn**

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**A BILL**

To amend section 184.10 and to enact sections 1  
122.97, 122.971, 122.972, 122.973, 122.974, 2  
122.975, 122.976, 122.977, 122.978, 122.979, 3  
122.9710, 122.9711, 122.9712, 122.9713, 4  
122.9714, and 5511.11 of the Revised Code to 5  
create the Ohio Broadband Development Grant 6  
Program, to encourage the Department of 7  
Transportation to work with telecommunications 8  
providers to lay fiber optic cable, and to make 9  
an appropriation. 10

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

**Section 1.** That section 184.10 be amended and sections 11  
122.97, 122.971, 122.972, 122.973, 122.974, 122.975, 122.976, 12  
122.977, 122.978, 122.979, 122.9710, 122.9711, 122.9712, 13  
122.9713, 122.9714, and 5511.11 of the Revised Code be enacted 14  
to read as follows: 15

**Sec. 122.97.** As used in sections 122.97 to 122.9714 of the 16  
Revised Code: 17

(A) "Broadband service" means advanced telecommunications capability that meets the benchmarks of the federal communications commission's latest annual broadband progress report, as issued pursuant to section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56.

(B) "Broadband service provider" means an entity that provides broadband service.

(C) "Internet service" means internet access service that serves end users primarily at fixed endpoints using stationary equipment, including fixed wireless services and fixed satellite services, but does not meet the benchmarks of the federal communications commission's latest annual broadband progress report, as issued pursuant to section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56.

(D) "Internet service provider" means an entity that provides internet service.

(E) "Last-mile infrastructure" means broadband infrastructure that connects a broadband service provider's network to the end user customer's on-premise telecommunications equipment.

(F) "Middle-mile infrastructure" means broadband infrastructure that connects a broadband service provider's core network infrastructure to last-mile infrastructure.

(G) "Political subdivision" has the same meaning as in section 122.9511 of the Revised Code.

(H) "Project area" means an unserved area located within the state proposed to be served by broadband service through a grant issued under section 122.975 of the Revised Code.

(I) "Unserved area" means an area that does not have broadband service according to the latest state broadband map. 46  
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Sec. 122.971. The director of development services shall establish the Ohio broadband development grant program to provide funds to extend broadband service to unserved areas of the state. 48  
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Sec. 122.972. Recipients of a grant under the Ohio broadband development grant program shall use the funds for the construction of infrastructure to provide broadband service to unserved areas. Construction shall include the acquisition and installation of new middle-mile or last-mile infrastructure. Construction may also include any of the following: obtaining construction permits, construction of facilities, purchasing equipment, and installation and testing of the broadband service. 52  
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Sec. 122.973. The following may apply for a grant under the Ohio broadband development grant program: 61  
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(A) Private businesses; 63

(B) Political subdivisions; 64

(C) Nonprofit entities; 65

(D) Cooperatives. 66

Sec. 122.974. To apply for a grant under the Ohio broadband development grant program, an eligible applicant, as described in section 122.973 of the Revised Code, shall submit an application to the director of development services on a form prescribed by the director. The application shall include all of the following information: 67  
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(A) The location of the project area; 73

<u>(B) The kind and amount of broadband infrastructure to be installed for the project, including proposed speeds;</u>	74 75
<u>(C) Evidence that the project area is an unserved area;</u>	76
<u>(D) The number of households that will have access to broadband service as a result of the project;</u>	77 78
<u>(E) Significant community institutions that will benefit from the project;</u>	79 80
<u>(F) The total cost of the project;</u>	81
<u>(G) Sources of funding or in-kind contributions for the project that will supplement any grant award;</u>	82 83
<u>(H) The amount of grant money being sought;</u>	84
<u>(I) If the applicant is a political subdivision, evidence that not later than six weeks before submission of the application, the applicant contacted, in writing, all internet service providers providing internet service in the proposed project area, as depicted by the latest state broadband map, to ask for each internet service provider's plan to provide, within twenty-four months of the date that contact is made, broadband service in the project area to minimum upload and minimum download speeds that meet or exceed the benchmark upload and download speeds specified in the latest annual broadband progress report issued by the federal communications commission referenced in division (A) of section 122.97 of the Revised Code;</u>	85 86 87 88 89 90 91 92 93 94 95 96 97
<u>(J) Evidence of any responses by internet service providers to the inquiries described in division (I) of this section;</u>	98 99 100
<u>(K) Evidence demonstrating that the eligible applicant has</u>	101

the financial, technical, and managerial resources necessary to 102  
complete the project and to provide ongoing maintenance and 103  
upgrades to the broadband infrastructure; 104

(L) A business plan demonstrating that the broadband 105  
service to be provided will be sustainable after the grant award 106  
is exhausted; 107

(M) Any additional information requested by the director. 108

**Sec. 122.975.** (A) The director of development services 109  
shall evaluate applications and award grants under the Ohio 110  
broadband development grant program. The director shall 111  
prioritize issuance of grant awards to applicants in the 112  
following order: 113

(1) Applications for project areas that have internet 114  
service at speeds not greater than 3 megabits per second for 115  
downloads and 768 kilobits per second for uploads as depicted by 116  
the latest state broadband map; 117

(2) Applications for project areas that have internet 118  
service at speeds of 3 megabits per second or greater for 119  
downloads and 768 kilobits per second or greater for uploads, 120  
but not greater than 10 megabits per second for downloads and 1 121  
megabit per second for uploads as depicted by the latest state 122  
broadband map; 123

(3) Applications for project areas that have internet 124  
service at speeds of 10 megabits per second or greater for 125  
downloads and 1 megabit per second or greater for uploads, but 126  
not greater than the speed benchmarks for broadband service as 127  
defined in division (A) of section 122.97 of the Revised Code, 128  
as depicted by the latest state broadband map. 129

(B) After classifying applications by priority under 130

division (A) of this section, the director shall further 131  
evaluate applications within each classification to give 132  
priority to applications that do any or all of the following: 133

(1) Offer new or substantially upgraded broadband service 134  
to important community institutions, including, but not limited 135  
to, libraries, educational institutions, public safety 136  
facilities, and healthcare facilities; 137

(2) Facilitate the use of telemedicine and electronic 138  
health records; 139

(3) Serve economically distressed areas of the state, as 140  
measured by indices of unemployment, poverty, or population loss 141  
that are significantly greater than the statewide average; 142

(4) Provide technical support and train residents, 143  
businesses, and institutions in the community served by the 144  
project to utilize broadband service; 145

(5) Include a plan to promote the newly available 146  
broadband services in the community; 147

(6) Provide evidence of strong support for the project 148  
from citizens, government, businesses, and institutions in the 149  
community; 150

(7) Provide access to broadband service to a greater 151  
number of unserved households and businesses; 152

(8) Leverage greater amounts of funding for the project 153  
from public and private sources, including federal programs that 154  
provide financial support for the deployment of new broadband 155  
infrastructure; 156

(9) Encourage the development of new or existing 157  
industries through the use of broadband service. 158

(C) The director shall endeavor to award grants under this 159  
section to qualified applicants in geographically dispersed 160  
regions of the state. 161

(D) The director shall provide public notice of each grant 162  
awarded under the program. 163

(E) The director shall deny a grant application if any 164  
internet service provider's written response described in 165  
division (J) of section 122.974 of the Revised Code credibly 166  
demonstrates that either of the following apply: 167

(1) The internet service provider currently provides or 168  
has begun construction to provide broadband service in the 169  
proposed project area at minimum upload and minimum download 170  
speeds that meet or exceed the benchmark upload and download 171  
speeds specified in the latest annual broadband progress report 172  
issued by the federal communications commission referenced in 173  
division (A) of section 122.97 of the Revised Code. 174

(2) The internet service provider credibly commits to 175  
complete construction and provide broadband service in the 176  
proposed project area at minimum upload and minimum download 177  
speeds that meet or exceed the benchmark upload and download 178  
speeds specified in the latest annual broadband progress report 179  
issued by the federal communications commission referenced in 180  
division (A) of section 122.97 of the Revised Code within 181  
twenty-four months of the date the contact is made. 182

(F) (1) If the director denies funding to an applicant as a 183  
result of an internet service provider's commitment made under 184  
division (E) (2) of this section and the internet service 185  
provider does not fulfill its commitment, the director shall be 186  
prohibited for the following two grant cycles from denying 187

funding to an applicant for the same project area on the basis 188  
of the same internet service provider providing a written 189  
response under division (E) of this section. 190

(2) Division (F)(1) of this section shall not apply if the 191  
director determines that the internet service provider's failure 192  
to fulfill its commitment was the result of factors beyond the 193  
internet service provider's control. 194

**Sec. 122.976.** Grant amounts awarded under section 122.975 195  
of the Revised Code shall not exceed the lesser of: 196

(A) Fifty per cent of the total project cost; or 197

(B) Five million dollars. 198

**Sec. 122.977.** If a recipient of a grant awarded under 199  
section 122.975 of the Revised Code does not spend all of the 200  
funds awarded to the recipient, the director of development 201  
services may, in the director's sole discretion, reallocate the 202  
unspent funds to other grant applicants, provided that the 203  
reallocation does not result in the total amount awarded to any 204  
single applicant exceeding the limit set forth in section 205  
122.976 of the Revised Code. 206

**Sec. 122.978.** An entity that provides broadband service in 207  
the state may challenge a grant awarded under section 122.975 of 208  
the Revised Code on the basis that the entity already provides 209  
broadband service in the proposed project area. 210

**Sec. 122.979.** A challenge under section 122.978 of the 211  
Revised Code shall meet the following requirements: 212

(A) It shall be made in writing; 213

(B) It shall include evidence demonstrating that the 214  
entity provides broadband service in the proposed project area, 215

<u>including either of the following:</u>	216
<u>(1) Form 477 the entity filed with the federal</u>	217
<u>communications commission for the current or preceding calendar</u>	218
<u>year;</u>	219
<u>(2) Invoices for broadband service subscriptions for the</u>	220
<u>current or preceding calendar year within the proposed project</u>	221
<u>area.</u>	222
<u>(C) It shall be received by the director of development</u>	223
<u>services not later than thirty days after public notice of the</u>	224
<u>grant award is issued under division (D) of section 122.975 of</u>	225
<u>the Revised Code.</u>	226
<u>Sec. 122.9710. The entity making a challenge under section</u>	227
<u>122.978 of the Revised Code shall provide a copy of the</u>	228
<u>challenge to the grant recipient.</u>	229
<u>Sec. 122.9711. (A) Not later than thirty days after</u>	230
<u>receiving a challenge under section 122.978 of the Revised Code,</u>	231
<u>the director of development services shall review the challenge</u>	232
<u>and do one of the following:</u>	233
<u>(1) Reject the challenge on the basis of incomplete or</u>	234
<u>insufficient evidence of broadband service in the project area;</u>	235
<u>(2) Allow the grant recipient to revise its application to</u>	236
<u>remove the challenged area from the proposed project;</u>	237
<u>(3) Terminate the grant award and reallocate the funds to</u>	238
<u>another applicant in accordance with section 122.977 of the</u>	239
<u>Revised Code.</u>	240
<u>(B) If the director makes a determination under division</u>	241
<u>(A) (2) of this section, the director shall modify the grant</u>	242
<u>award for the proposed project accordingly.</u>	243

Sec. 122.9712. An applicant that receives a grant under section 122.975 of the Revised Code shall own the infrastructure installed pursuant to the grant award, and shall be responsible for ongoing maintenance and upgrades to such infrastructure. 244  
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Sec. 122.9713. The director of development services shall seek out gifts, grants, donations, and pledges to provide funding for the grant program. 248  
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Sec. 122.9714. The director of development services shall adopt rules under Chapter 119. of the Revised Code necessary to implement sections 122.97 to 122.9714 of the Revised Code. The rules shall include procedures governing the application and grant-award processes. 251  
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**Sec. 184.10.** As used in sections 184.10 to 184.20 of the Revised Code: 256  
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(A) "In-state entity" includes individuals, public and private entities, agencies, and institutions, private companies or organizations, partnerships, business trusts, or other business entities or ventures, or research organizations, whether for profit or not for profit, that have substantial presence in Ohio. 258  
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(B) "Research and development projects" means projects or activities in support of Ohio industry, commerce, and business, which include, without limitation, research and product innovation, development, and commercialization through efforts by, and may include collaboration among, Ohio business and industry, state and local public entities and agencies, public and private institutions, research organizations, or other in-state entities specifically formed for the sole purpose of both investing in and providing direct management support to any one 264  
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or combination of any of the foregoing entities or any other in- 273  
state entities. Those projects and activities also include 274  
projects and activities supporting any and all matters related 275  
to research and development purposes including: attracting 276  
researchers and research teams by endowing chairs or otherwise; 277  
developing and commercializing products and processes; 278  
promoting, developing, and securing intellectual property 279  
matters and rights such as copyrights and patents; promoting, 280  
developing, and securing property interests, including time 281  
sharing arrangements; ~~and~~ promoting, developing, and securing 282  
financial rights and matters such as royalties, licensing, and 283  
other financial gain or sharing resulting from research and 284  
development; and evaluating and overseeing the expansion of 285  
broadband service to unserved areas of the state under sections 286  
122.97 to 122.9714 of the Revised Code. 287

Sec. 5511.11. The director of transportation is hereby 288  
encouraged to work with telecommunications providers in an 289  
effort to lay fiber optic cable on or near state highways when 290  
creating new or fixing existing state highways. 291

**Section 2.** That existing section 184.10 of the Revised 292  
Code is hereby repealed. 293

**Section 3.** All items in this section are hereby 294  
appropriated as designated out of any moneys in the state 295  
treasury to the credit of the designated fund. For all 296  
appropriations made in this act, those in the first column are 297  
for fiscal year 2020 and those in the second column are for 298  
fiscal year 2021. The appropriations made in this act are in 299  
addition to any other appropriations made for the FY 2020-FY 300  
2021 biennium. 301

DEV DEVELOPMENT SERVICES AGENCY 302

Facilities Establishment Fund Group			303		
7037	195632	Broadband Development	\$50,000,000	\$50,000,000	304
		Grant Program			305
TOTAL FCE Facilities Establishment					306
Fund Group			\$50,000,000	\$50,000,000	307
TOTAL ALL BUDGET FUND GROUPS			\$50,000,000	\$50,000,000	308
BROADBAND DEVELOPMENT GRANT PROGRAM					309
The foregoing appropriation item 195632, Broadband					310
Development Grant Program, shall be used to award grants under					311
the Ohio Broadband Development Grant Program as described in					312
sections 122.97 to 122.9714 of the Revised Code.					313
<b>Section 4.</b> Within the limits set forth in this act, the					314
Director of Budget and Management shall establish accounts					315
indicating the source and amount of funds for each appropriation					316
made in this act and shall determine the form and manner in					317
which appropriation accounts shall be maintained. Expenditures					318
from appropriations contained in this act shall be accounted for					319
as though made in the main operating appropriations act of the					320
133rd General Assembly.					321
The appropriations made in this act are subject to all					322
provisions of the main operating appropriations act of the 133rd					323
General Assembly that are generally applicable to such					324
appropriations.					325