

# AN ACT

To amend sections 133.13 and 727.01 and to enact sections 122.40, 122.401, 122.403, 122.404, 122.406, 122.407, 122.408, 122.4010, 122.4013, 122.4015, 122.4016, 122.4017, 122.4018, 122.4019, 122.4020, 122.4021, 122.4023, 122.4024, 122.4025, 122.4030, 122.4031, 122.4033, 122.4034, 122.4035, 122.4036, 122.4037, 122.4040, 122.4041, 122.4043, 122.4044, 122.4045, 122.4046, 122.4050, 122.4051, 122.4053, 122.4055, 122.4060, 122.4061, 122.4063, 122.4070, 122.4071, 122.4073, 122.4075, 122.4076, 122.4077, 188.01, 188.02, 188.05, 188.08, 188.11, 188.14, 188.17, 188.20, 188.23, 188.27, 188.30, 303.251, 505.881, 4926.01, 4926.03, 4926.06, 4926.09, 4926.12, 4926.15, 4926.18, 4926.21, 4926.24, 4926.27, 4926.30, 4926.33, 4926.36, 4926.39, 4926.42, 4926.43, 4926.45, 4926.48, 4926.51, 4926.54, 4926.57, and 4926.60 of the Revised Code regarding broadband expansion, including access to electric cooperative easements and facilities, to make an appropriation, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

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

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

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

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

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

- (a) A video service provider as defined in section 1332.21 of the Revised Code;
- (b) A provider that is capable of providing tier one or tier two broadband service and is one of the following:
- (i) A telecommunications service provider;
- (ii) A satellite broadcasting service provider;
- (iii) A wireless service provider as defined in section 4927.01 of the Revised Code.
- (2) "Broadband provider" does not include a governmental or quasi-governmental entity.
- (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.
- (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:
- (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.
- (2) It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance.
- (F) "Ohio residential broadband expansion grant program" means the program established under sections 122.40 to 122.4077 of the Revised Code.
- (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.
- (H) "Satellite broadcasting service" has the same meaning as in section 5739.01 of the Revised Code.
- (I) "Telecommunications service" has the same meaning as in section 1332.21 of the Revised Code.
- (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.
- (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.
- (L) "Tier one area" means an area that has access to tier one broadband service but not tier two broadband service. "Tier one area" includes an area where construction of a network to provide tier one broadband service is in progress and is scheduled to be completed within a two-year period. "Tier one area" excludes an area where construction of a network to provide tier two broadband service is in progress and is scheduled to be completed within a two-year period.
- (M) "Unserved area" means an area without access to tier one broadband service or tier two broadband service. "Unserved area" excludes an area where construction of a network to provide tier one broadband service or tier two broadband service is in progress and is scheduled to be completed within a two-year period.
- Sec. 122.401. There is hereby established the Ohio residential broadband expansion grant

program within the development services agency. The agency shall administer and provide staff assistance for the program. The agency shall be responsible for receiving and reviewing applications for program grants and for sending completed applications to the broadband expansion program authority for final review and award of program grants.

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

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

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

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

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

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

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

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

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

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

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

(F) If the director of development services assigns a designee to serve on the authority, the director of development services shall appoint a professional employee of the development services

agency to serve as the director's designee at authority meetings. In the absence of the director of development services or the director's designee, the vice-chairperson of the authority shall serve as chairperson of authority meetings.

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

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

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

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

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

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

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

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

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

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

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

(a) The number of applications;

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

(c) The broadband providers submitting applications;

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

(e) A description of any public right-of-way or public facilities to be utilized for the projects;

(f) The speeds of the tier two broadband services under the projects;

(g) The amount of the grant funds requested for each project and the proportion of project funding to be provided by the broadband provider and by other entities;

(h) The number of residential and nonresidential locations that will have access to tier two broadband service under each project.

(2) Tracking the program grants awarded annually, including:

(a) The number of program grants;

(b) The geographic location or locations of the projects;

(c) The broadband providers that received program grants and the entities or companies that submitted the application;

(d) A description of the tier two broadband infrastructure and technology deployed in each project;

(e) A description of any public right-of-way or public facilities utilized as part of the project;

(f) The speeds of the tier two broadband services enabled by each project;

(g) The amounts of each program grant, the share of the project funding provided by the broadband provider, and any share of the project funding provided by other entities;

(h) The number of residential and nonresidential locations that will have access to tier two broadband service for each project.

(3) Listing the amount of any unencumbered program grant funds that remain available for award under the Ohio residential broadband expansion grant program;

(4) Adding any additional factors deemed necessary by the authority to monitor the program.

(C) Review all progress reports and operational reports required under section 122.4070 of the Revised Code.

(D) Review all pending county requests made pursuant to section 122.4051 of the Revised Code for program grants.

(E) Identify any best practices for, and impediments to, the continued expansion of tier two broadband infrastructure and technology in the state;

(F) Coordinate and promote the availability of publicly accessible digital literacy programs to increase fluency in the use and security of interactive digital tools and searchable networks, including the ability to use digital tools safely and effectively for learning, collaborating, and producing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Before the end of the submission period described under division (B) of this section; or  
(2) Not later than fourteen days after the end of the submission period described under division (B) of this section, 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.

(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.

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:

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

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

(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;

(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.

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

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

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

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

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

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

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

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

(g) Property tax assessments made by the municipal corporation under Chapter 727. of the Revised Code, township under section 505.881 of the Revised Code, or county under section 303.251 of the Revised Code.

(4) The source and amount of any financial or in-kind contributions received or approved for any part of the overall eligible project cost, but not applied to the broadband funding gap;

(5) A description of, or documentation demonstrating, the broadband provider's managerial and technical expertise and experience with broadband service projects;

(6) Whether the broadband provider plans to use wired, wireless, or satellite technology to complete the project;

- (7) A description of the scalability of the project;
- (8) The megabit-per-second broadband download and upload speeds planned for the project;
- (9) A description of the broadband provider's customer service capabilities, including any locally based call centers or customer service offices;
- (10) A copy of the broadband provider's general customer service policies, including any policy to credit customers for service outages or the provider's failure to keep scheduled appointments for service;
- (11) The length of time that the broadband provider has been operating in the state;
- (12) Proof that the broadband provider has the financial stability to complete the project;
- (13) A projected construction timetable, including the anticipated date of the provision of tier two broadband service access within the project;
- (14) A description of anticipated or preliminary government authorizations, permits, and other approvals required in connection with the project, and an estimated timetable for the acquisition of such approvals;
- (15) A notification from the broadband provider informing the development services agency of any information contained in the application, or within related documents submitted with it, that the provider considers proprietary or a trade secret;
- (16) A notarized statement that the broadband provider accepts the condition that noncompliance with Ohio residential broadband expansion grant program requirements may require the provider to refund all or part of any program grant the provider receives;
- (17) A brief description of any arrangements, including any subleases of infrastructure or joint ownership arrangements that the broadband provider that submitted the application has entered into, or plans to enter into, with another broadband provider, an electric cooperative, or an electric distribution utility, to enable the offering of tier two broadband service under the project;
- (18) Other relevant information that the agency determines is necessary and prescribes by rule;
- (19) Any other information the broadband provider considers necessary.

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

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

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

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

Sec. 122.4023. Pursuant to rules adopted under section 122.4077 of the Revised Code, the development services agency shall evaluate the information and documents submitted by a



broadband provider in an application under section 122.4013 of the Revised Code or by a challenging provider under section 122.4030 of the Revised Code. The evaluation shall determine whether the information and documents are proprietary or constitute a trade secret. Upon receipt of the information and documents, the agency shall keep them confidential and shall not publish them on the agency's web site, unless the agency finds that any information or document is not proprietary or a trade secret. Any information or document found not to be proprietary or a trade secret under this section shall not be considered confidential and shall be published on the agency web site as is required for an application under division (C)(2) of section 122.4019 of the Revised Code.

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

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

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

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

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

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

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

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

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

(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.

(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.

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:

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

(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:

(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 service;

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

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

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

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

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

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

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

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

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

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

(B) When revising the application, the broadband provider shall not expand the scope or impact of the original application, nor shall the provider add any new residential addresses to the

eligible project.

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

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

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

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

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

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

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

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

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

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

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

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

contributions:

(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;

(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;

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

(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;

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

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

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

(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;

(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;

(g) The eligible projects' location within Ohio opportunity zones as defined under division (A)(2) of section 122.84 of the Revised Code.

(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.

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.

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

(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;

(2) Factors that would constrain a broadband provider that receives a grant from offering or providing tier two broadband service in the same manner as the service is offered by broadband

providers in other areas of the state without funding from the Ohio residential broadband expansion grant program.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The agency may require the broadband provider to refund to the appropriate municipal corporation, township, or county the entire amount of general revenue funds or other discretionary

funds that it contributed toward the broadband funding gap under division (A)(3)(c) or (d) of section 122.4020 of the Revised Code.

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

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

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

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

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

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

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

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

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

Sec. 122.4063. (A) Nothing in sections 122.40 to 122.4077 of the Revised Code entitles the state of Ohio, the development services agency, the broadband expansion program authority, or any other governmental entity to any ownership or other rights to broadband infrastructure constructed by

a broadband provider pursuant to a program grant awarded to an eligible project.

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

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

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

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

(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:

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

(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;

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

(4) The average price of broadband service;

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

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.

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.

Sec. 122.4076. (A) The broadband expansion program 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:

(1) The number of applications received;

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

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

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

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

(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.

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.

(B) The rules may include the following:

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

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

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

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

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

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

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

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

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

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

(A) "Broadband service" means any wholesale or retail service that consists of, or includes



the provision of, connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources and that either provides access to the internet or provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" includes video service, voice over internet protocol service, and internet protocol-enabled services.

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

(C) "Internet protocol-enabled services" and "voice over internet protocol service" have the same meanings as in section 4927.01 of the Revised Code.

(D) "Servient estate" means the land burdened by an easement.

(E) "Video programming" means any programming generally considered comparable to programming provided by a television broadcast station.

(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.

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.

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:

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

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

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

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

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

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

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

Sec. 188.17. Any court determination regarding an easement subject to an action described in section 188.05 of the Revised Code shall be considered a finding that the provision of broadband

service is an allowable use or purpose under the easement as if the use or purpose was specifically stated in the terms of the easement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 727.01. Each municipal corporation shall have special power to levy and collect special assessments. The legislative authority of a municipal corporation may assess upon the abutting, adjacent, and contiguous, or other specially benefited, lots or lands in the municipal corporation, any part of the cost connected with the improvement of any street, alley, dock, wharf, pier, public road, place, boulevard, parkway, or park entrance or an easement of the municipal corporation available for the purpose of the improvement to be made in it by grading, draining, curbing, paving, repaving, repairing, treating the surface with substances designed to lay the dust on it or preserve it, constructing sidewalks, piers, wharves, docks, retaining walls, sewers, sewage disposal works and treatment plants, sewage pumping stations, water treatment plants, water pumping stations, reservoirs, and water storage tanks or standpipes, together with the facilities and appurtenances necessary and proper therefor, drains, storm-water retention basins, watercourses, water mains, or laying of water pipe, or the lighting, sprinkling, sweeping, or cleaning thereof, or removing snow therefrom, any part of the cost and expense of planting, maintaining, and removing shade trees thereupon; any part of the cost of a voluntary action, as defined in section 3746.01 of the Revised Code, undertaken pursuant to Chapter 3746. of the Revised Code by a special improvement district

created under Chapter 1710. of the Revised Code, including the cost of acquiring property with respect to which the voluntary action is undertaken; any part of the cost and expense of constructing, maintaining, repairing, cleaning, and enclosing ditches; any part of the cost and expense of operating, maintaining, and replacing heating and cooling facilities for enclosed pedestrian canopies and malls; any part of the cost and expense of acquiring and improving parking facilities and structures for off-street parking of motor vehicles or of acquiring land and improving it by clearing, grading, draining, paving, lighting, erecting, constructing, and equipping it for parking facilities and structures for off-street parking of motor vehicles, to the extent authorized by section 717.05 of the Revised Code, but only if no special assessment made for the purpose of developing off-street parking facilities and structures is levied against any land being used solely for off-street parking or against any land used solely for single or two-family dwellings; any part of the cost and expense of operating and maintaining the off-street parking facilities and structures; and any part of the cost connected with changing the channel of, or narrowing, widening, dredging, deepening, or improving, any stream or watercourse, and for constructing or improving any levees or boulevards on any stream or watercourse, or along or about any stream or watercourse, together with any retaining wall, riprap protection, bulkhead, culverts, approaches, flood gates, waterways, or drains incidental to any stream or watercourse, or for making any other improvement of any river or lake front, whether it is privately or publicly owned, which the legislative authority declares conducive to the public health, convenience, or welfare. If a program grant is awarded for an eligible project under sections 122.40 to 122.4077 of the Revised Code, a municipal corporation may levy, against dwellings that are subject to the project, a special assessment for the purpose of providing a contribution from the municipal corporation towards the funding gap for the project. The assessment shall be at a rate that will produce a total assessment that is not more than the municipal corporation's contribution towards the funding gap for the eligible project as described in the application under section 122.4020 of the Revised Code. In addition, a municipal corporation may levy a special assessment for public improvement or public services plans of a district formed under Chapter 1710. of the Revised Code, as provided in that chapter. Except as otherwise provided in Chapter 1710. of the Revised Code, special assessments may be levied by any of the following methods:

- (A) By a percentage of the tax value of the property assessed;
- (B) In proportion to the benefits that may result from the improvement;
- (C) By the front foot of the property bounding and abutting upon the improvement.

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

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

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

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

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

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

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

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

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

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

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

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.

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.

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.

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:

(A) Insufficient capacity;

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

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

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

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

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

Sec. 4926.24. The attachment of facilities on the poles of an electric cooperative by a

provider shall comply with the following:

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

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

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

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

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

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

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

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

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

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

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

in the county in which the largest physical portion of the attachment will occur.

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

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

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

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

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

(1) A new pole attachment agreement; or

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

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

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

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

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

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

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

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

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

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:

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

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

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

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

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

(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.

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.

SECTION 2. That existing sections 133.13 and 727.01 of the Revised Code are hereby repealed.

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

SECTION 4.

1	2	3	4	5
A		DEV DEVELOPMENT SERVICES AGENCY		
B		Facilities Establishment Fund Group		
C	5GT0 195550	Broadband Development Grants	\$0	\$20,000,000
D		TOTAL FCE Facilities Establishment Fund Group	\$0	\$20,000,000



E TOTAL ALL BUDGET FUND GROUPS	\$0	\$20,000,000
BROADBAND DEVELOPMENT GRANTS		

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

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 2021 is hereby reappropriated for the same purpose in fiscal year 2022.

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

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

SECTION 6. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the lack of broadband access in the state is an ongoing issue that has become more urgent during the COVID-19 pandemic and requires additional broadband infrastructure to be deployed at the earliest possible date. Therefore, this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_