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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

H.B. 13\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 13's Fiscal Note](#)

**Version:** As Reported by House Finance

**Primary Sponsors:** Reps. Carfagna and O'Brien

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## SUMMARY

### Overview

The bill establishes four approaches to address broadband expansion and infrastructure in Ohio. First, the bill creates the Ohio Residential Broadband Expansion Grant Program in the Department of Commerce and the Ohio Broadband Expansion Program Authority to award program grants to fund the construction of broadband projects in unserved areas of the state.

Second, the bill establishes a process for broadband facilitators (electric distribution utilities approved by the Public Utilities Commission of Ohio to construct, and recover net costs for, broadband infrastructure) to construct the infrastructure in its own certified territory or, under an agreement, in the geographic areas served by an electric cooperative or a municipal electric utility.

Third, under the bill, the use of electric cooperative easements is expanded for the provision of broadband service and a process is created for addressing damages to servient estates (land burdened by an easement).

Fourth, the bill establishes a process for granting broadband providers, telecommunication service providers, video service providers, and wireless service providers access to electric cooperatives pole facilities through pole attachments.

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\* This analysis was completed before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

## Ohio Residential Broadband Expansion Grant Program

- Creates the Ohio Residential Broadband Expansion Grant Program (grant program) within the Department of Commerce (Department).
- Requires the Department to receive and review applications for program grants and send completed applications to the Broadband Expansion Program Authority for review and award of “program grant” money for eligible projects under the grant program.
- Specifies that an eligible project may not proceed unless the Authority awards the project a program grant.
- Requires a broadband provider to construct last mile broadband infrastructure after receiving a program grant award.

### Grant program definitions

- Defines “broadband provider” as a telecommunications service provider, satellite broadcasting service provider, or a wireless service provider that is capable of providing tier one or tier two service; or a video service provider, but not a governmental or quasi-governmental entity.
- Categorizes broadband service as retail wireline or wireless broadband service capable of delivering internet access speeds of at least:
  - 10, but less than 25 megabits per second downstream and at least 1 but less than 3 megabits per second upstream for “tier one broadband service” (tier one service); and
  - 25 megabits per second downstream and 3 megabits per second upstream for “tier two broadband service” (tier two service).
- Defines “broadband funding gap” as 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 the provider has determined is the maximum amount that is cost effective for the provider to invest in last mile construction for that network.
- Defines “eligible project” as a project to provide tier two service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under the bill.
- Defines “unserved area” as an area without access to tier one service or tier two service, excluding an area where construction of a network to provide tier one service or tier two service is in progress and is scheduled to be completed within a two-year period.
- Defines “last mile” as the last portion of a physical broadband network that connects an eligible project to the broader network used to provide tier two service to which all of the following apply:

- It includes other network infrastructure in the last portion of the network that is needed to provide tier two service to residences as part of an eligible project, but that does not include any portion of the network infrastructure that is outside of the last portion;
- It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance.
- Defines “tier one area” as area that has access to tier one service but not tier two service and includes an area where construction of a network to provide tier one service is in progress and is scheduled to be completed within two years, but excludes an area where construction of a network to provide tier two service is in progress and is scheduled to be completed within two years.

### **Broadband Expansion Program Authority**

- Creates the Broadband Expansion Program Authority (Authority) within the Department and exempts the Authority from being an agency for purposes of Ohio’s Agency Sunset Review Law.
- Names as Authority members the Director of Commerce and the Chief Investment Officer of JobsOhio or their designees, the designation of whom must be in writing, and three appointed members, to serve four-year terms with reappointment permitted, with the Speaker of the House, the Senate President, and the Governor each making one appointment.<sup>1</sup>
- Specifies that appointed Authority members must have broadband infrastructure and technology expertise, but may not be affiliated with or employed by the broadband industry or be in a position to benefit from a program grant.
- Provides the appointed members compensation in the form of reimbursement of necessary and actual expenses.
- Provides a monthly stipend for each appointed member, except that an appointed member that also serves as a state administrative department head will not receive the stipend.

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<sup>1</sup> Section 27, Article II of the Ohio Constitution (Section 27) states that “no appointing power shall be exercised by the General Assembly.” The Ohio Supreme Court has interpreted Section 27 as prohibiting the General Assembly from appointing “public officers.” A public officer is an officer created by law that exercises some portion of the sovereign power. *State ex rel. Herbert v. Ferguson*, 142 Ohio St. 496 (1944). “Sovereign power” includes if an appointee is “empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must act necessarily through an official agency.” *State ex rel. Landis v. Bd. of Commissioners of Butler County*, 95 Ohio St. 157 (1917). The Authority might be considered to be exercising sovereign power through the decisions it must make regarding program grants.

- Requires the monthly stipend to be calculated such that it qualifies each appointed member for one year of service credit with the Ohio Public Employees Retirement System (OPERS) for each year of the appointed member's four-year term, but specifies that the service credit may not be considered for determining health care coverage if offered by OPERS.
- Provides for appointment of the chairperson and vice-chairperson, filling vacancies, conducting meetings, including conducting meetings electronically, and voting requirements.
- Requires the Authority to conduct hearings and to do several tasks, including for example, to monitor the grant program by tracking details for annual applications and annual program grants and to continually examine, and propose updates to, any broadband plan provided by law enacted by the General Assembly or by Executive Order issued by the Governor.
- Requires the Authority to make an annual report by December 1 to the Governor and General Assembly regarding its hearings, monitoring, examination, review, and various other duties regarding broadband service in Ohio and to make the report available on the Department's website.<sup>2</sup>
- Prohibits the Authority from disclosing any proprietary or trade secrets in the report.

### **Application process for program grants**

- Permits a broadband provider to apply for a program grant for an eligible project.
- Requires the application form to include a statement informing the applicant that failure to comply with the grant program or to meet required tier two service proposed in the application may require the refund of all or a portion of the program grant awarded for the project.
- Permits applications to be submitted in person or by certified mail or email, or uploaded to a designated Department website for applications.
- Requires applications to include several items including, for example, the location and a description of the project, a letter of intent that a broadband provider will provide access to the service, the amount of the broadband funding gap and the state funds amounts requested, and the broadband speeds planned for the project.
- Provides that an application is ineligible for a program grant if:
  - It proposes to provide tier two service where already available; or

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<sup>2</sup> It appears this annual report (R.C. 188.10) is separate from the annual report that focuses entirely on the grant program (R.C. 188.76), with the result that the Authority must make two annual reports. See "**Authority grant program report**" below)

- In the proposed area, construction of tier two service is in progress and (1) is being constructed without program funding by the broadband provider that submitted the application or (2) is scheduled to be completed by another provider not later than two years after the date of a challenge to the application.
- Requires the Department to accept applications for program grants each fiscal year and to fund program grants until funds for the fiscal year are no longer available.
- Requires applications to be accepted during not more than two 60- to 90-day submission periods each fiscal year as specified by the Authority.
- After receiving notice from the Department that a broadband provider's application is incomplete, permits the provider to complete and refile the application before the end of the submission period or not more than 14 days after the period ends, if the Department grants an extension for good cause shown.

### **Proprietary and trade secret information**

- Requires the Department to review information and documents submitted (in an application or project challenge) by a broadband provider to determine whether it is proprietary or a trade secret and to keep the information and documents confidential unless the Department finds that it is not proprietary or a trade secret and therefore is not confidential.

### **Financial assurance condition for receiving grants**

- Permits the Authority to 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 before construction begins.

### **Department application website**

- Requires certain grant program and application information, except for denied applications, to be published on the Department website, including the list of residential addresses included with completed program applications, all other information included with applications that is not confidential, and status updates of applications regarding Authority decisions regarding project challenges.

### **County-requested solicitations for broadband providers**

- Permits a board of county commissioners, by resolution, to request the Department to solicit applications from broadband providers for program grants for eligible projects in the municipal corporations and townships of the county.
- Requires a solicitation request to identify, to the extent possible, the residential addresses in unserved or tier one areas of the county, provide a point of contact for the county, municipal corporations, and townships where the addresses are located, and include any helpful relevant information, documents, or materials for the application.
- Requires the Department to solicit applications for program grants if a county makes a request and not later than seven days after receiving a request, to make it and the

accompanying information available for review on the Department website for up to two years.

- Specifies that an application for a program grant made in response to a county request must fully comply with all grant program requirements and that nothing in the county request provides relief from compliance with any grant program requirement.
- Specifies that the Department is not responsible for a broadband provider's failure to respond to a county-requested solicitation made by the Department or to submit an application.

### **Project challenge process**

- Permits a broadband provider that provides tier two service within or directly adjacent to an eligible project to challenge, in writing, all or part of a completed application for a program grant not later than 65 days (or longer if an extension is granted) after the close of the submission period (or extension period).
- Requires the challenging broadband provider (challenging provider) to provide, by certified mail, a written copy of the challenge to the broadband provider that submitted the application (applicant provider) and the Authority.
- Specifies that for a challenge to succeed, a challenging provider must provide sufficient evidence to the Department demonstrating that all or part of a project under the application is ineligible for a grant by:
  - Disputing that the eligible project contains unserved or tier one areas; and
  - Attesting to the challenging provider's existing or planned offering of tier two service to all or part of the eligible project.
- Permit a challenging provider to demonstrate that all or part of a project under an application is ineligible for a program grant, by presenting shapefile data, residential addresses, maps, or similar geographic details, but not census block or census tract level data.
- Permits the Authority to suspend all or part of a challenged application or reject the challenge and approve the application, and requires the Authority to notify the applicant provider and the challenging provider of its decisions by providing a copy of the decision by certified mail or email.
- Requires the Authority to allow an applicant provider 14 days (unless an extension of another 14 days is granted for good cause shown) to revise and resubmit its application if the Authority upholds all or part of a challenge and to provide a copy of the revised application to the Authority and the challenging provider by certified mail or email or by uploading it to the Department website.
- Prohibits the applicant provider from revising the application to expand the original application's scope or impact or to add any new residential addresses.

- Specifies that an application is considered to be withdrawn if an applicant provider fails to respond to an Authority notification or to revise an application to the Authority's satisfaction.

### **Scoring system**

- Requires the Department, in consultation with the Authority, to establish a weighted scoring system to evaluate and select applications for program grants and make it available on the Department website.
- Specifies that the scoring system must prioritize applications according to certain factors listed in order from highest to lowest and, as an example, lists the highest two factors as eligible projects in unserved areas, rather than tier one areas and eligible projects located in distressed areas.
- Allows the Authority to consider, after the weighted factors, any other factors it determines reasonable, appropriate, and consistent with facilitating the economic deployment of tier two service to unserved or tier one areas.
- Prohibits the Authority, when awarding program grants, from considering:
  - Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified in the grant program; or
  - Factors that would constrain the broadband provider from offering or providing tier two service as is offered by other broadband providers in Ohio without grant program funding.

### **Program grant awards**

- Requires the Authority to award program grants after reviewing applications sent to it, considering all regulatory obligations under the law, and basing the awards on the scoring system and to notify the broadband providers that submitted applications upon making the awards.

### **Funding for program grants**

- Creates the Ohio Residential Broadband Expansion Grant Program Fund in the state treasury to be used by the Department exclusively for program grants.
- Requires the transfer of \$20 million from the Facilities Establishment Fund in the Development Services Agency to the Ohio Residential Broadband Expansion Grant Program Fund in the Department of Commerce on July 1, 2020, or as soon as possible thereafter, and appropriates the transferred amount for fiscal year 2021.

### **Funding from video service providers (VSPs)**

- Permits a broadband provider to enter into an arrangement to designate video service provider (VSP) fees remitted by the provider for contribution towards an eligible project's broadband funding gap if:

- The provider is a VSP that collects and remits VSP fees to one or more legislative authorities in which an eligible project is located; and
- The arrangement is entered into by mutual consent with the legislative authorities.
- Specifies that, under the alternate payment term arrangements made with a VSP, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all of the eligible project costs incurred by the broadband provider prior to completion of the project or award of a program grant.

### **Funding from special assessments**

- Permits a municipal corporation, county, or township to fund a portion of the broadband funding gap for an eligible project through a property tax assessment made by the municipal corporation, county, or township.

### **Distribution of grant funds**

- Requires up to 30% of the program grant to be disbursed before project construction begins, up to 60% of the program grant to be disbursed periodically over the course of the project construction according to Department rules, and the remaining portion to be disbursed not later than 60 days after notification that construction is complete.
- Permits the Department to withhold payments for failure to meet at least the minimum broadband service speeds required under the bill until the speeds are achieved.

### **Speed verification**

- Permits the Department, through an independent third party, to conduct speed verification tests of an eligible project that receives a program grant.
- Requires speed verification tests to occur after project construction is complete but prior to the final grant disbursement and at any time during the reporting period (See **Grant award reports**, below), after receiving a complaint about a residence that is part of the eligible project.
- Requires the speed verification tests to be conducted on at least two days at two different times each day.

### **Program noncompliance**

- Requires the Department to (1) notify a broadband provider if the provider, after receiving a program grant, has not complied with program requirements and (2) provide the provider the opportunity to explain or cure the noncompliance.
- Permits the Department to require the broadband provider to refund (1) an amount of the program grant award as the Department determines and (2) to the appropriate municipal corporation, county, or township, the entire amount of general revenue funds or other discretionary funds they contributed toward the broadband funding gap.



- Requires the broadband provider to pay the refund for noncompliance, or failure to explain or cure the noncompliance, not more than 30 days after the Department determines that a refund must be paid.

### **Grant award reports**

- Requires each broadband provider that receives a program grant to submit:
  - An annual progress report on the status of the deployment of the broadband network for which the grant was awarded; and
  - An operational report with the Department not later than 60 days after the project's completion and annually for another four years.
- Requires broadband provider reports to include an account of how program grant funds have been used, the progress toward fulfilling the objectives for which the grant was awarded and, to include, at a minimum, the following:
  - The number of residences accessing tier two service as a result of the eligible project;
  - The number of commercial and residential entities not funded directly by the grant program but accessing tier two service as a result of the eligible project;
  - The upstream and downstream speed of the broadband service provided;
  - The average price of broadband service;
  - The number of broadband service subscriptions attributable to the program grant.
- Requires broadband provider reports to be in a Department prescribed format and publicly available on the Department website.
- Permits the Department to set report due dates and for good cause shown, to grant due date extensions.

### **Authority grant program report**

- Requires the Authority to complete an annual report that evaluates the grant program's success, includes certain program information and the findings and recommendations agreed to by a majority of Authority members and to include the evaluation, findings, and recommendations in its annual report required by law of all state departments.
- Requires the Authority to publish the report on the Department website and to provide the report to the Governor and the General Assembly by December 1 each year.

### **Broadband infrastructure ownership rights**

- Specifies that nothing in the bill:
  - Entitles the state, Department, 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 for an eligible project; or

- Prevents the assignment, sale, change in ownership, or similar transaction for that infrastructure and specifies that no such transaction relieves the successor of obligations under the bill.

## Rules

- Requires the Department to adopt rules for the grant program including rules for an application form and application procedures and procedures for periodic program grant disbursements.
- Permits the Department to adopt rules that include additional application requirements; procedures for, and circumstances under which, partial funding of application is permitted; procedures for Authority meetings, extension periods, and application challenges, hearings, and public comment; and procedures for county-requested solicitations for broadband providers.
- Specifies that Department rules are not subject to certain provisions of Ohio law governing review of agency rules regarding regulatory restrictions.

## Broadband facilitators of broadband infrastructure

- Specifies that it is the public policy of Ohio to facilitate the provision to broadband infrastructure under just and reasonable rates, terms, and conditions; facilitate broadband service in priority unserved areas in Ohio; provide access in such areas by facilitating the construction of broadband infrastructure; and not unduly favor or advantage any broadband provider.
- Permits a broadband facilitator to construct broadband infrastructure only in priority unserved areas located in the *facilitator's certified territory* on application to and approval by the PUCO (see "**Application for broadband infrastructure in certified territory**," below).
- Permits a broadband facilitator to construct broadband infrastructure in priority unserved areas in *the territory of an electric cooperative or a municipal electric utility* under an agreement that is based on mutually acceptable terms and provides for full and timely recovery of the facilitator's net infrastructure construction costs.
- Requires the electric cooperative or municipal electric utility to provide compensation to the broadband facilitator as specified in the agreement's terms and requires the EDU (in its capacity as a facilitator) to file a copy of the agreement with PUCO for review and approval as part of an application for broadband construction for an eligible project.
- States that nothing in the bill authorizes a broadband facilitator to construct, own, or operate broadband infrastructure to provide broadband services to retail customers or to provide services as an internet service provider or telecommunications service provider.
- Prohibits a broadband facilitator from constructing broadband infrastructure in a geographic area in which a broadband provider has received a program grant under the

Ohio Residential Broadband Expansion Grant Program, unless the provider does not construct the project that received the program grant.

## Definitions

- Defines “broadband facilitator” to mean an electric distribution utility (EDU) that applies to construct, and constructs, broadband infrastructure to serve priority unserved areas but does not offer or provide broadband service to retail customers.
- Defines “broadband infrastructure” as any equipment, facilities, electronics, property, and technology deployments used for the purpose of providing access to and transmitting broadband service.
- Defines “broadband provider” to mean an entity capable of providing broadband service that is a video service provider, telecommunications service provider, satellite broadcasting service provider, or wireless service provider.
- Specifies that “broadband provider” excludes a governmental entity, quasi-governmental entity, an EDU, a broadband facilitator, and any affiliate of an EDU or broadband facilitator.
- Defines “broadband service” as high-speed internet access service capable of providing a minimum download speed of 25 megabits per second and a minimum upload speed of 3 megabits per second.
- Defines “eligible project” as a project to offer or provide broadband service to retail customers in a priority unserved area.
- Defines “last mile” as the portion of a physical broadband network, other than the broadband facilitator’s broadband infrastructure, that connects an eligible project to the broadband network used to provide broadband service.
- Defines “last mile investment costs” to mean investment costs approved under the bill for pole attachments and make-ready work.
- Defines “make-ready work” to mean, as determined by the nature of the work required, “make-ready,” “complex make-ready,” or “simple make-ready” as those terms are defined in federal regulations.
- Defines “net cost” as costs for broadband infrastructure, including a carrying charge on capital investments that reflects a broadband facilitator’s weighted average cost of capital, depreciation, amortization, accretion, tax and expenses, plus operation and maintenance expenses, less any income generated by leasing broadband infrastructure constructed under the bill.
- Defines “priority unserved area” as an unserved area in one of the 32 counties within the Appalachian region of Ohio that ranks in the top four Ohio counties when considering the number of unserved customers in the county, the cost per customer of serving unserved areas in the county, and other factors as specified in PUCO rules adopted under the bill.

- Defines “unserved area” as any area of Ohio in which internet access service capable of providing a minimum download speed of 10 megabits per second and a minimum upload speed of one megabit per second is not available to potential retail customers located in the area.

### **Broadband infrastructure construction policy**

- Requires a broadband facilitator to establish a written policy for constructing broadband infrastructure that must be available to the public and must include:
  - Procedures for executing agreements with an electric cooperative or municipal electric utility;
  - The method for the full and timely recovery of the facilitator’s net costs associated with the infrastructure construction;
  - Procedures for a nondiscriminatory competitive selection process to select a qualified broadband provider as part of the application process with PUCO regarding broadband infrastructure in the facilitator’s certified territory;
  - A nondiscriminatory procedure for other broadband providers to request interconnection access to the infrastructure;
  - A list of any just and reasonable charges associated with granting or leasing interconnection access and the standards on which the charges are calculated.

### **Competitive selection process**

- Requires a broadband facilitator that constructs broadband infrastructure under the bill to establish a nondiscriminatory competitive selection process that meets the following minimum requirements:
  - The facilitator must submit a request for proposals (RFP) to select at least one broadband provider capable of completing the last mile to an eligible project;
  - If no broadband providers respond to the RFP, requires the facilitator to submit a second RFP that includes proposed funding for up to 50% of the last mile investment associated with completing the last mile for an eligible project;
  - A participating broadband provider demonstrates:
    - ❖ Extensive experience, technical ability, and financial capability to successfully deploy broadband service in the priority unserved area;
    - ❖ The length of time the provider has been providing broadband service in Ohio; and
    - ❖ The ability of the provider to leverage nearby or adjacent broadband infrastructure to facilitate completion of the project’s last mile.
- Requires PUCO to review the competitive selection process, as part of an application for broadband infrastructure in the broadband facilitator’s certified territory, to confirm that the process was conducted prudently and achieved a competitive result.

## **Application for broadband infrastructure in certified territory**

- Requires a broadband facilitator to file an application with PUCO for approval of broadband infrastructure construction before constructing the infrastructure in a priority unserved area of the facilitator's certified territory.
- Prohibits a broadband facilitator from filing an application unless the facilitator has selected at least one broadband provider to complete the last mile for the infrastructure described in the application.
- Requires the application to be on a form prescribed by PUCO and to include:
  - The location and a detailed description of the priority unserved area where broadband infrastructure will be constructed;
  - The number of new customers that are expected to have access to broadband service after the infrastructure is constructed;
  - The incremental benefits, including any economic development benefits, attributable to the infrastructure construction;
  - The estimated cost of the infrastructure;
  - The estimated time to construct the infrastructure;
  - Whether the application includes proposed funding for last mile investment under a competitive selection process involving a second RFP;
  - Any information the broadband facilitator received from the competitively selected broadband provider and any updates to that information;
  - A copy of the agreement entered into by the broadband facilitator following the competitive selection process and in which the broadband provider commits to completing the last mile related to the eligible project and offering retail broadband service in the priority unserved area within 18 months after the infrastructure is constructed;
  - A copy of the broadband facilitator's broadband infrastructure construction policy established under the bill;
  - A copy of any agreement the broadband facilitator entered into with an electric cooperative or municipal electric utility for construction of broadband infrastructure.

## **PUCO application review**

- Permits PUCO to approve a broadband facilitator's application regarding broadband infrastructure in a priority unserved area of the facilitator's certified territory, within 180 days after its submission if, after review, PUCO determines that the application is complete and does the following:
  - Finds that the area in which broadband construction is proposed qualifies as a priority unserved area;

- Determines that the application does not violate the prohibition against constructing broadband infrastructure in an area which a broadband provider has been awarded a program grant under the Residential Broadband Expansion Grant Program;
- Finds, after reviewing the facilitator's estimated infrastructure construction costs, that the costs are just and reasonable;
- Finds, after reviewing the facilitator's estimated benefits or conducting its own review, that there are incremental benefits, including economic development benefits, attributable to the infrastructure construction;
- Finds that the infrastructure does not duplicate or overlap with infrastructure previously approved or with federal funding under Connect America funds or the Rural Digital Opportunity Fund;
- Determines whether the facilitator's competitive selection process was conducted prudently and achieved a reasonable, competitive result.
- Specifies that approved applications must be in the form of a PUCO order and that the order supersedes any conflicting or otherwise applicable tariff or schedule for broadband infrastructure or last mile investments in a previous order.
- Requires PUCO to deny the application if the application is incomplete or PUCO is unable to make the findings and determinations described above.
- Requires PUCO to deny the application if PUCO determines that the capital investment associated with the eligible project exceeds \$2.5 million, provided that the capital investment does not include the broadband facilitator's operation and maintenance expenses associated with the capital investment, the facilitator's total future revenue requirement collections approved under the bill, or last mile funding for a broadband provider.

### **Cost recovery**

- Requires PUCO to approve a rate mechanism that allows an EDU to recover the following costs from its retail electric service customers:
  - The net costs incurred by a broadband facilitator to construct, own, and maintain infrastructure, which must reflect a credit for any revenues recovered under an agreement with an electric cooperative or a municipal electric utility to build broadband infrastructure;
  - Up to 50% of any last mile investment costs as approved in the application.
- Prohibits PUCO from approving the rate mechanism if it determines that the mechanism would result in the EDU receiving double recovery of any costs.
- If a rate mechanism is disapproved, allows PUCO to subsequently approve a revised rate mechanism if the double recovery is cured.

- Requires a PUCO-approved rate mechanism to fully and timely recover (1) net costs related to broadband infrastructure, if the costs are prudently incurred, which must reflect a credit for any revenue recovered under an agreement with an electric cooperative or municipal electric utility and (2) last mile investment costs as specified by PUCO.
- Requires PUCO to authorize a monthly charge, including deferrals, that does not exceed \$1.00 per month for residential customers and that does not exceed \$5.50 per customer per month for nonresidential customers.
- Allows an existing rate mechanism, including a previously approved surcharge, to be used (if determined suitable by PUCO) to recover costs under the bill if the existing rate mechanism will continue to exist for the full term of the cost recovery for broadband infrastructure and any last mile investment costs.
- Requires PUCO to establish a new rate mechanism to ensure uninterrupted full and timely recovery of approved infrastructure costs and last mile investment costs, if an existing rate mechanism used to recover costs under the bill subsequently expires.

### **Annual rate review**

- Requires PUCO to review and update the rates charged under the rate mechanism annually until an EDU's approved net costs and any approved last mile investment costs are fully recovered and to include the costs for the year under review.
- Specifies that recovery of approved broadband infrastructure costs and any approved last mile investment costs are not subject to the earnings test in the competitive retail electric service law or public utility ratemaking law in Revised Code Chapter 4909.
- Requires an EDU acting as a broadband facilitator with an approved application for an eligible project under the bill to request or receive, from a telecommunications service provider or video service provider, a reduced per pole rental rate for attachments to any pole in a county where an eligible project is approved for a priority unserved area.
- Requires PUCO to determine the reduced rate.
- Specifies that the EDU acting as a broadband facilitator must apply to the PUCO for any amendment to its pole attachment tariff necessary to implement the pole rental rate provision under the bill.

### **Infrastructure sale or transfer**

- Prohibits a broadband facilitator that constructs broadband infrastructure under an approved application from selling or transferring the infrastructure, after the infrastructure is constructed, to an affiliate of an EDU.

### **Interconnection access**

- Permits a broadband provider to request interconnection access to broadband infrastructure constructed under an approved application.

- Requires a broadband facilitator to grant access to the provider not later than 30 days after receipt of the request except that the 30-day period does not apply if the facilitator, including the facilitator's representative or agent, has more than 100 requests at the time the request is made.
- Specifies that interconnection access may only be granted if the broadband provider commits in writing to offering broadband service.
- Allows a broadband facilitator to condition interconnection access in the agreement based on (1) infrastructure space availability and (2) the broadband provider's compliance with applicable engineering and construction standards and administrative procedures.
- Prohibits a broadband facilitator that constructs broadband infrastructure from charging a provider for interconnecting with the infrastructure for the purpose for deploying last mile facilities to offer broadband service to unserved retail customers or transmitting the broadband service in the priority unserved area of an eligible project.
- Allows a broadband facilitator to suspend broadband interconnection access to a broadband provider that defaults on payment of the facilitator's charges.
- Specifies that a broadband provider is not responsible for costs of any kind, including pole replacement, transfer, or relocation or make-ready costs, if the broadband facilitator requests or requires payment for such costs in order to make room or otherwise permit broadband infrastructure construction for an approved application under the bill.
- Specifies that any pole replaced in order to construct broadband infrastructure under an approved application must remain the property of the owner of the pole that was replaced.

## Report

- Requires each EDU that has a broadband infrastructure application approved under bill to file a report with PUCO not later than three and one-half years after the bill's effective date.
- Requires the report to include:
  - The number of applications the EDU filed with PUCO during the three-year period of the broadband facilitation process;
  - A description identifying the priority unserved areas in the EDU's certified territory;
  - A summary of each PUCO-approved application that includes a description of each priority unserved area, the construction status of the project, and the broadband facilitator's costs for the project;
  - The number of broadband providers with which the facilitator contracted to complete the last mile;



- The total net costs for the EDU as approved by PUCO;
  - The total last mile investment costs for the EDU as approved by PUCO;
  - The percentage of total net costs and last mile investment costs recovered through the PUCO-approved rate mechanism;
  - The number of new retail customers with access to broadband service at the time of the report as a result of the approved construction applications.
- Requires PUCO to submit the reports to the Speaker of the House, the Senate President, and the standing committees of the House and the Senate that primarily deal with broadband issues.
  - Requires PUCO to submit the reports to the Broadband Ohio Office and the Broadband Expansion Program Authority.
  - Specifies that PUCO may combine into one report the reports filed by different EDUs provided that the EDU reports are included in their entirety.

## **Rules**

- Requires PUCO to adopt rules not later than 120 days after the effective date of the bill to implement the provisions governing broadband facilitator construction of broadband infrastructure.

## **Sunset provision**

- Specifies that the provisions governing broadband facilitator construction of broadband infrastructure under the bill, except for the state policy provision and the prohibition against the sale or transfer of broadband infrastructure, are repealed three years after the bill's effective date.
- Allows the continued recovery of any net costs or last mile investment costs that PUCO approves for recovery but has not yet been recovered by the EDU as of the repeal of the broadband facilitation process provisions.

## **Electric cooperative easements**

- Allows an easement granted to an electric cooperative for transmitting, delivering, or otherwise providing electric power ("easement") to be used, apportioned, or subleased to provide broadband service without such use, apportionment, or sublease being considered an additional burden on the servient estate (which is the land burdened by the easement).
- Defines "broadband service" as 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.
- Includes video service, voice over internet protocol service, and internet protocol-enabled services.
- Allows for servient estate owners to bring an action for damages regarding the use, apportionment, or sublease of the easement.
- Provides that an action for damages must be brought within one year of any alleged damages or else the claim is forfeited.
- Limits damages to the difference between the fair market value (as determined by a qualified real estate appraiser) of the owner's interest in the property of the servient estate immediately before and after the provision of broadband service and provides that any damages awarded cannot continue, accumulate, or accrue.
- Prohibits past, current, or future revenues or profits derived or to be derived from the use, apportionment, or sublease of an easement for broadband service from being admissible for any purpose in the action for damages.
- Provides that the court may not grant injunctive relief or any other equitable relief for the action for damages.
- Provides that any court determination regarding an easement subject to the action for damages, must be considered a finding that the provision of broadband service is an allowable use or purpose under the easement as if specifically stated in the terms of the easement.
- Requires a court determination in the action for damages to be filed by the defendant with the county recorder of the county in which the servient estate is located and requires the recorder to make a notation in the official record linking the determination to the servient estate and easement.
- Provides that the electric cooperative easement provisions of the bill do not expand the powers of the State, its agencies, or any political subdivision beyond the authority existing under federal or state law.
- Provides that Ohio law governing the appropriation of property do not apply to the electric cooperative easement provisions of the bill.

### **Electric cooperative pole attachments**

- Requires that, on request from a provider, an electric cooperative must grant the provider nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions in accordance with the bill.
- Defines "attachment" to mean 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.

- Defines “provider” to mean a broadband provider, telecommunications service provider, video service provider, or wireless service provider.
- Defines “broadband provider” to mean telecommunications service provider, satellite broadcasting service provider, or a wireless service provider that is capable of providing tier one or tier two service; or a video service provider, but not a governmental or quasi-governmental entity.<sup>3</sup>
- Establishes a process for a provider to request and for an electric cooperative to consider, and to grant or deny, the provider’s attachments to the cooperative’s poles, including decision-making standards and time frames for granting or denying access.
- Requires a provider and electric cooperative to comply with make-ready work processes under federal law and to provide good-faith estimates for any make-ready work regarding provider attachments to cooperative poles.
- Requires an electric cooperative to establish fees for provider attachments in accordance with the federal law formula for cable pole attachment rates and Federal Communications Commission orders and regulations implementing the formula.
- Requires a provider’s attachments to an electric cooperative’s poles to meet: (1) the most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative and (2) the National Electric Safety Code in effect on the date of the attachment.
- Establishes provisions for pole modification and requirements for sharing costs for a modification.
- Establishes procedures, requirements, and remedies for an electric cooperative or provider to settle pole attachment disputes in the court of common pleas in the county in which the cooperative’s Ohio headquarters are located.

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<sup>3</sup> The definitions of “provider” and “broadband provider” overlap such that the requirement that the telecommunications service provider and wireless service provider be capable of providing tier one or tier two service likely becomes irrelevant for sections 4926.50 to 4926.95. See R.C. 188.01 and 4926.50.

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## HISTORY

Action	Date
Introduced	5-16-19
Reported, H. Finance	---

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