



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 281

132nd General Assembly
(As Introduced)

Reps. Carfagna, Brenner, Hill, LaTourette, Lipps, Seitz, R. Smith, Thompson, Lepore-Hagan

BILL SUMMARY

Residential Broadband Expansion Program

- Requires the Development Services Agency (DSA) to establish the Residential Broadband Expansion (RBE) Program to provide grants to municipal corporations and townships (project sponsors) to help fund projects that provide broadband to any residential area within their boundaries that is without broadband (eligible area).
- Defines terms applicable to an RBE Program project as follows:
 - "Broadband funding gap" – the difference between the amount a broadband provider calculates is necessary to construct the last mile of a specific broadband telecommunications network and maximum amount the provider determines is cost effective for provider investment in that network.
 - "Last mile" – the last portion of a physical broadband telecommunications network that connects an eligible area to the broader telecommunications system.
 - "Broadband service" – telecommunications service capable of providing a minimum download speed of 25 megabits per second and a minimum upload speed of 3 megabits per second.
 - "Broadband provider" – a video service provider (VSP) authorized to provide video programming over wires or cables in public rights-of-way, including Internet protocol technology or a telecommunications provider capable of providing broadband service, but not a publicly funded broadband network service provider.

Broadband funding gap

- Specifies that the broadband funding gap for each project must be funded in order for a project to proceed.
- Requires that one-third of the broadband funding gap be funded with project sponsor VSP fees, one-third with county matching funds, and one-third with RBE Program grants awarded by DSA.
- Permits a project sponsor to pay its share of the broadband funding gap through a single lump sum payment or through two or more payments as a deduction from the project provider's VSP fees due to the project sponsor.

Project sponsor process

- Requires a project sponsor to:
 - Identify an eligible area within the boundaries of a municipal corporation or township;
 - Determine availability of VSP fees and county matching funds to fund two-thirds of the broadband funding gap for the project with the remaining one-third to come from DSA grant funds, if available;
 - Determine which broadband provider would provide the best service at the best price for the project, after contacting providers and determining for each its (1) service capability and willingness and (2) broadband funding gap.
- Permits a project sponsor to propose an agreement with the selected provider to contract, install, and support last mile broadband service to the specified eligible area and sets minimum requirements for the agreement, including specifying that it is contingent upon the distribution of approved broadband funding gap funds.
- After terms of an agreement are established, requires a project sponsor to develop a project plan that includes a description of the eligible area, the amount of the broadband funding gap, and copies of the agreement with the broadband provider, the DSA application, and the written proposal requesting county matching funds.

Review by legislative authority

- Requires the legislative authority for the project sponsor to review the project agreement and plan, approve or reject them within 90 days, and if approving them, adopt an ordinance or resolution authorizing the project sponsor to enter into the



agreement and to submit an application to DSA and a matching fund request to the appropriate county.

County matching fund request

- Upon approval of the legislative authority, requires the project sponsor to submit a request for county matching funds that is equal to one-third of the project's broadband funding gap amount to the board of county commissioners of the county in which the project is located.
- Requires the board of county commissioners to approve or reject the request for matching funds within 90 days of receiving the request and, if approving the request, to do so by adopting a resolution or a memorandum of understanding that authorizes the distribution of the matching funds to the project sponsor.

DSA application process

- Requires the Director of Development Services to accept applications from project sponsors each fiscal year, review each application within 60 days, and fund applications on a first-come, first-served basis until all program funds for the fiscal year are awarded.
- Permits a project sponsor to refile an application left pending (and therefore considered denied) at the end of the fiscal year provided that the application is still current or has been updated.

DSA grant funds

- Caps the cumulative total of all grants awarded for a biennium at \$2 million.
- Requires the Director of the Office of Budget and Management and the Director of Development Services to identify \$2 million within the DSA budget and transfer it to the Ohio Broadband Development Grant Fund created under the bill and makes an appropriation in that amount for FY 2019.

Rules and annual report

- Requires the Director of Development Services to adopt rules for the RBE Program, including rules for an application form and application procedures.
- Requires DSA to include certain RBE Program information in its annual report required under current law of all state departments.



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CONTENT AND OPERATION

Broadband expansion overview

The bill provides a process through which "project sponsors," defined as municipal corporations and townships applying for funding under the bill, may obtain grants for projects to expand broadband service to a residential area within their borders that is without access to broadband service ("eligible area").¹ Under the bill, responsibility for funding a project is shared between broadband providers and project sponsors. A "broadband provider" may be (1) a video service provider (VSP) authorized to provide video programming over wires or cables located at least in part in public rights-of-way, including Internet protocol or any other technology, under Ohio's Video Service Authorization (VSA) law or (2) a telecommunications service provider that is capable of providing broadband service. A publicly funded broadband network service provider cannot be a broadband provider under the bill.²

The project sponsor must select a broadband provider and, with the provider, determine the cost of the project and how much of that amount the provider is willing to invest. The cost difference between the provider's proposed investment and the total cost to complete the project is what the bill seeks to help fund.³

¹ R.C. 122.09(D) and (F).

² R.C. 122.09(B).

³ R.C. 122.09(A) and 122.096(A).



Residential Broadband Expansion Program

The bill requires DSA to establish a Residential Broadband Expansion (RBE) Program and award grants to assist with the expansion of broadband service to residential areas within municipal corporations or townships where broadband service is not available.⁴ As project sponsors, municipal corporations and townships may expand broadband service to eligible areas of their jurisdictions by applying for, and participating in, the RBE Program. The grants are to fund projects to construct, install, and support broadband service at the speed standards set by the bill.⁵

Under the bill, "broadband service" is broadband telecommunications service capable of providing a minimum download speed of 25 megabits per second and a minimum upload speed of 3 megabits per second. "Telecommunications service" is the offering of telecommunications (which is the transmission of information of the user's choosing without change in the form or content of the information as sent and received) for a fee directly to the public regardless of the facilities used.⁶

Broadband funding gap

DSA grant money distributed through the RBE Program is to be used toward meeting the project's "broadband funding gap," which the bill defines as the difference between the total amount of money a broadband provider calculates is necessary to construct the last mile of a specific broadband telecommunications 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. "Last mile" refers to the last portion of a physical broadband telecommunications network that connects an eligible area to the broader telecommunications system.⁷

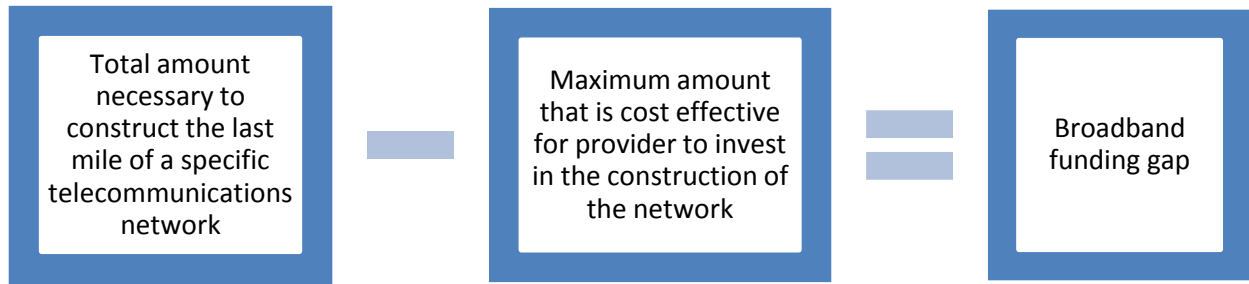
⁴ R.C. 122.091.

⁵ R.C. 122.092.

⁶ R.C. 122.09(C), (F), and (G) and 122.092; 47 United States Code 153, not in the bill.

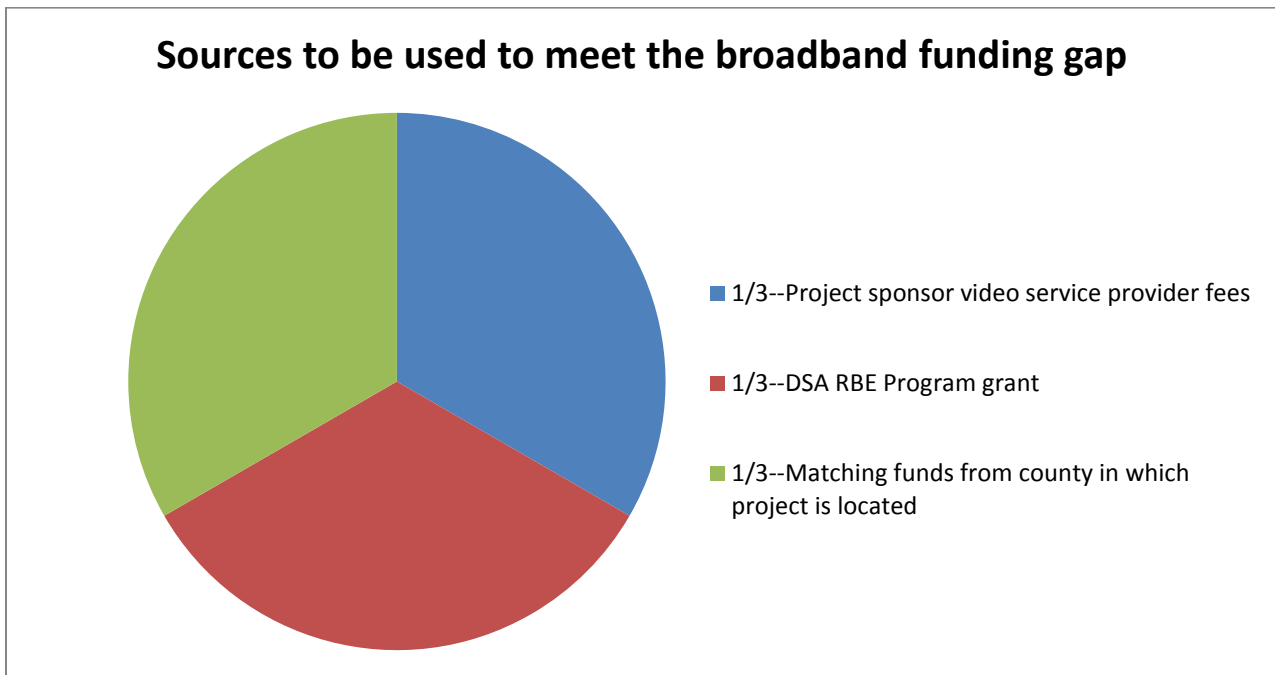
⁷ R.C. 122.09(A) and (E).





Funding of broadband funding gap

No residential broadband expansion project may proceed unless funding equal to the amount of the broadband funding gap has been approved. The bill requires the broadband funding gap to be funded equally from three sources, with one-third of the funds coming from each of the sources shown in the pie chart below:



The one-third project sponsor share of the broadband funding gap must be funded with municipal corporation or township VSP fees, as applicable. The bill establishes two methods for the project sponsor to pay its share: (1) a single lump sum payment or (2) two or more payments made over a period of time. If the project sponsor pays its share over a period of time, the payments must be in the form of a deduction from the broadband provider's VSP fee as specified in the project agreement established

between the provider and the project sponsor. (See "**Determination of project provider**" below.)⁸

The VSA law permits the quarterly collection of fees from VSPs for payment to each municipal corporation or township in which the VSP offers video service. VSPs may collect the fee from subscribers that have a service address within the municipal corporation or township.⁹

Project sponsor process

The bill requires a project sponsor to complete a multi-step process before submitting an application for DSA RBE Program grant funds. First, the project sponsor must:

- Identify the eligible area of the project for which the project sponsor will apply for matching funds;
- Determine if the project sponsor collects or has available sufficient video service provider fees to fund one-third of the broadband funding gap for the project;
- Determine the availability of county matching funds for the project;
- Contact one or more broadband providers to determine if any provider is capable of providing broadband service to the eligible area and willing to enter into an agreement with the project sponsor to construct, install, and support the necessary broadband infrastructure for the project; and
- Determine, in conjunction with the providers, the broadband funding gap for each provider interested in participating in the project.¹⁰

Determination of project provider

Next, from among the broadband providers contacted, the project sponsor must review the broadband funding gap for, and the capabilities of, each provider that is willing to participate in the residential broadband expansion project.¹¹ After this review, the project sponsor must determine which provider would offer the best service at the

⁸ R.C. 122.096.

⁹ R.C. 1332.32, not in the bill.

¹⁰ R.C. 122.097.

¹¹ R.C. 122.098(A).

best price for the project and then may propose an agreement with the provider to construct, install, and support last mile broadband service to the specified eligible area.¹²

Project agreement requirements

The project agreement must require the provider to construct, install, and support last mile broadband infrastructure to a specific eligible area and require the project sponsor to remit to the provider a payment for the project's broadband funding gap. The agreement also must require that the project sponsor specify how the sponsor's share of the payment will be paid, either as a lump sum or according to schedule of deductions from the provider's quarterly VSP fee over a specified period of time.¹³

A project agreement is subject to the approval of the legislative authority of the project sponsor. The agreement is also contingent upon the distribution of broadband funding gap funds from the three sources (described above) that have been approved for the project.¹⁴

Project plan requirements

Following the establishment of agreement terms, the project sponsor must develop a project plan as the next step of the process. Minimum requirements for the project plan include:

- A specific description of the eligible area to receive broadband service under the project;
- The total amount of the broadband funding gap, including the amount of funds to be provided by the project sponsor, the state, and the county in which the project is located;
- A copy of the agreement with the broadband provider for the project;
- A copy of the RBE Program application submitted to DSA;
- A written proposal requesting county funds from the county in which the project is located.¹⁵

¹² R.C. 122.098(B).

¹³ R.C. 122.098(B)(1) to (3).

¹⁴ R.C. 122.0910.

¹⁵ R.C. 122.0911.



Review by legislative authority

Under the bill, before a residential broadband expansion project may commence, the legislative authority must review the project agreement and project plan. The legislative authority must then, within 90 days of receiving them, approve or reject them. To approve the agreement and plan, the legislative authority must adopt an ordinance or resolution that authorizes the project sponsor to do the following:

Enter into the project agreement with the broadband provider;

- Submit the RBE Program application to DSA;
- Submit the proposal requesting matching funds for the project to the appropriate county.¹⁶

County matching fund request

Under the next step of the process, the project sponsor must submit a proposal requesting county matching funds for the project to the board of county commissioners of the county in which the project is located. The amount requested must be for the amount equal to one-third of the project's broadband funding gap. The bill requires this to occur after the project sponsor's legislative authority approves the project agreement and plan and authorizes the next steps as described above. Within 90 days of receiving the request, the board must approve or reject the proposal for the county matching funds. The board must adopt a resolution or a memorandum of understanding authorizing the distribution of the funds to the project sponsor if the board decides to approve the funding request.¹⁷

DSA application process

Each fiscal year, the Director of Development Services must accept project sponsors' applications for RBE Program funding. (See **COMMENT**.) To apply for a grant, a project sponsor must submit an application to the Director on a form that the Director prescribes. The Director must review applications in the order that they are received and review each application within 60 days after receiving it.¹⁸ Any applications pending at the end of the fiscal year are considered denied. However, a

¹⁶ R.C. 122.0912.

¹⁷ R.C. 122.0913.

¹⁸ R.C. 122.092 and 122.095(A).



project sponsor may refile the application in a subsequent fiscal year provided that all information is still current or has been updated.¹⁹

Application requirements

Each program application, at a minimum, must include the following information:

- The location and description of the residential broadband expansion project;
- The amount of the broadband funding gap and the amount of funds requested;
- A copy of the ordinance or resolution enacted or adopted by the legislative authority of the project sponsor;
- A copy of the resolution or memorandum of understanding by the board of county commissioners of the county in which the project is located;
- A copy of the agreement (or a written acknowledgment of the agreement) between the project sponsor and a broadband provider that confirms the provider's commitment to construct the broadband infrastructure for the project after receiving payment for the total broadband funding gap amount;
- Any other information, prescribed by rule, that the Director determines is necessary.²⁰

DSA grant funds

The bill requires DSA to fund applications for residential broadband expansion projects on a first-come, first-served basis until program funds for the fiscal year are no longer available. The amount of funding each project receives under the bill is equal to one-third of the total cost of the broadband funding gap for that project. Under the bill, the cumulative total of the grants awarded for a biennium may not exceed \$2 million.²¹

¹⁹ R.C. 122.093(B).

²⁰ R.C. 122.095(B).

²¹ R.C. 122.093(A).



Ohio Broadband Development Grant Fund

The bill requires the Director of the Office of Budget and Management, in consultation with the Director of Development Services, to identify \$2 million within the DSA budget on July 1, 2018 (or as soon as possible after that date) and transfer that amount to the Ohio Broadband Development Grant Fund created by the bill. The bill makes an appropriation in that amount for FY 2019.²²

RBE Program rules

The Director of Development Services must adopt rules for the RBE Program established under the bill. The rules must establish an application form and application procedures for the Program and may include other requirements for the application in addition to those specified in the bill.²³

DSA annual report

The bill requires DSA to include information related to the RBE Program in its annual report of transactions and proceedings required of all state departments under current law. The number of program applications received, the number of applications that received funding, the number of miles of broadband infrastructure constructed in eligible areas, and the number of new residences receiving broadband under the program must be included in the report.²⁴

COMMENT

It is unclear whether language in the bill requiring the Director of Development Services to "accept" applications for the residential broadband expansion program means that the Director must approve the applications. The bill does not expressly state that the Director must approve or reject an application only that applications left pending at the end of the fiscal year are "deemed denied." Presumably, incomplete applications or those not conforming to DSA rules adopted under the bill would not be funded.²⁵

²² Section 2.

²³ R.C. 122.0916.

²⁴ R.C. 122.0915.

²⁵ R.C. 122.095 and Section 2.



HISTORY

ACTION

DATE

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