



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Sub. H.B. 378**

132nd General Assembly  
(As Reported by H. Finance)

**Reps.** R. Smith and Cera, Hood, Riedel, Antonio, Carfagna, Scherer, Boggs, Hill, West, Rezabek, Sheehy, Miller, Lepore-Hagan, Boccieri, Craig, LaTourette, Patterson, Rogers

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## **BILL SUMMARY**

### **Ohio Broadband Development Grant Program overview**

- Establishes the Ohio Broadband Development Grant Program (Program), which seeks to provide funds to specified entities to extend broadband service to unserved areas of the state.
- Provides that the Program is to be administered by the Director of the Development Services Agency (DSA).
- Defines "broadband service" as advanced telecommunications capability that meets the minimum speed benchmarks of the Federal Communications Commission's latest *Annual Broadband Progress Report*, which is 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads.
- Defines "broadband service provider" as an entity that provides broadband service.
- Defines "unserved area" as an area that does not have broadband service according to the latest state broadband map.

### **Applying for the grant**

- Allows the following to apply for a grant: (1) private businesses, (2) political subdivisions, (3) nonprofit entities, and (4) cooperatives.
- Defines "political subdivision" as a municipal corporation, township, county, school district, or any other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

- Provides that an eligible applicant must submit an application to the DSA Director with certain required information, including, for example, project area, infrastructure details, evidence of the project area being unserved, cost and funding information, and a sustainable business plan.
- Requires applicants that are political subdivisions to provide evidence indicating that six weeks before submitting the application, the applicant asked in writing for all Internet service providers in the project area to provide any plans to provide service to the level required by the FCC's latest annual broadband progress report within the next 24 months.
- Defines "project area" as an unserved area located within the state proposed to be served by broadband service through a grant issued under the Program.
- Defines "Internet service" as Internet access service that serves end users primarily at fixed endpoints using stationary equipment, including fixed wireless services and fixed satellite services, but does not meet the benchmarks of the FCC's latest annual broadband progress report.
- Defines "Internet service provider" as an entity that provides Internet service.

### **Evaluation of applications**

- Requires the DSA Director to evaluate applications and award grants through a two-level prioritization process.
- Requires the DSA Director to first classify and prioritize applications based on current Internet speeds in project areas in the following order:
  - Less than 3 Mbps for downloads and 768 kilobits per second (kbps) for uploads;
  - 3 to 10 Mbps for downloads and 768 kbps to 1 Mbps for uploads;
  - 10 Mbps or greater for downloads and 1 Mbps or greater for uploads, but not greater than the FCC's benchmarks in the latest annual broadband progress report.
- Requires the DSA Director to then further evaluate applications within each classification to give priority to applications that meet certain criteria, including, for example, offering new or substantially upgraded service to community institutions and servicing economically distressed areas of the state.

- Requires the DSA Director to endeavor to award grants to qualified applicants in geographically dispersed regions of the state.
- Requires the DSA Director to provide public notice of each grant awarded under the Program.
- Requires the DSA Director to deny an application from a political subdivision if either of the following apply:
  - The Internet service provider currently provides or has begun construction to provide broadband service in the project area at the required minimum upload and download speeds;
  - The Internet service provider credibly commits to complete construction and provide broadband service in the proposed project area at the required minimum upload and download speeds within 24 months of the date that the political subdivision first makes required contact with the provider.
- Provides that if the DSA Director denies funding to an applicant as a result of an Internet service provider's commitment to provide broadband service within 24 months and the provider fails to do so, the Director is prohibited for two grant funding cycles from denying funding to an applicant in a project area based on the same provider's commitment.
- Provides that the prohibition on the DSA Director does not apply if the Internet service provider's failure to meet its commitment to provide broadband service within 24 months was the result of factors beyond the provider's control.

### **Grant amounts**

- Provides that grant amounts cannot exceed the lesser of: (1) 50% of the total project cost, or (2) \$5 million.

### **Use of grant funds**

- Requires recipients to use funds to construct broadband infrastructure to provide broadband service to unserved areas, including installing new middle-mile or last-mile infrastructure, obtaining construction permits, constructing facilities, purchasing equipment, and installing and testing the service.
- Defines "last-mile infrastructure" as broadband infrastructure that connects a broadband service provider's network to the end user customer's on-premise telecommunications equipment.



- Defines "middle-mile infrastructure" as broadband infrastructure that connects a broadband service provider's core network infrastructure to last-mile infrastructure.
- Provides that if a recipient does not spend all of its awarded funds, the DSA Director may reallocate the unspent funds to other grant applicants, as long as the reallocation does not result in the total amount awarded to any single applicant exceeding the lesser of \$5 million or 50% of the total project cost.

### **Challenging a grant award**

- Establishes a process to allow an entity that provides broadband service in the state to challenge a Program grant award on the basis that the entity already provides broadband service for that proposed project area.
- Requires a challenge to meet certain requirements, including, for example, evidence that the entity already provides broadband service in the project area.
- Requires that, no later than 30 days after receiving a challenge, the DSA Director must review it and do one of the following:
  - Reject it based on incomplete or insufficient evidence of broadband service being provided in the project area;
  - Allow the grant recipient to revise its application to remove the challenged area and then modify the Program grant award accordingly;
  - Terminate the grant award and reallocate funds to another applicant.

### **Infrastructure ownership and responsibilities**

- Provides that an applicant that receives a Program grant award must own the infrastructure installed and be responsible for ongoing maintenance or upgrades to it.

### **Appropriation**

- Appropriates \$50 million per year for FYs 2018 and 2019 through the Third Frontier Research and Development Fund, to be used to award grants under the Program.
- Requires \$1 million of the appropriation in each fiscal year to be used to contract with one or more independent organizations that have experience working with Ohio broadband providers to collect and analyze state broadband data and do other activities regarding broadband service.



## Rulemaking

- Requires the DSA Director to adopt rules under Chapter 119. of the Revised Code necessary to implement the Program, which rules must include procedures governing the application and grant-award processes.

## "Research and development project" under Third Frontier Commission

- Provides that evaluating and overseeing the expansion of broadband service to unserved areas of the state is considered a "research and development" project under Third Frontier Commission law, which effectively allows the Third Frontier Commission to allocate funds towards the Program.

## Laying fiber optic cable on or near state highways

- Encourages the Director of Transportation to work with telecommunications providers in an effort to lay fiber optic cable on or near state highways when creating or fixing existing state highways.

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## CONTENT AND OPERATION

### Ohio Broadband Development Grant Program

#### Overview

The bill requires the Director of the Development Services Agency (DSA) to establish the Ohio Broadband Development Grant Program (Program). The Program seeks to provide funds to extend broadband service to unserved areas of Ohio.<sup>1</sup>

The bill defines "broadband service" as advanced telecommunications capability that meets the benchmarks of the latest Federal Communications Commission (FCC) *Annual Broadband Progress Report*.<sup>2</sup> The latest report was issued in 2018 and provides speed benchmarks of 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads for fixed services. The report establishes no benchmark for mobile services.<sup>3</sup> As a result, the broadband service the bill refers to is likely limited to fixed services, although both fixed and mobile are considered to be capable of "advanced telecommunications capability" by the FCC.<sup>4</sup> "Broadband service provider" is defined as an entity that provides broadband service.<sup>5</sup> The bill defines "unserved area" as an area that does not have broadband service according to the latest state broadband map.<sup>6</sup> Although the bill does not identify the state broadband map, it most likely refers to the broadband map maintained by Connect Ohio.<sup>7</sup>

#### Applying for the grant

##### Who can apply

Under the bill, the following entities may apply for a grant: (1) private businesses, (2) political subdivisions, (3) nonprofit entities, and (4) cooperatives.<sup>8</sup>

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<sup>1</sup> R.C. 122.971.

<sup>2</sup> R.C. 122.97(A).

<sup>3</sup> *2018 Broadband Deployment Report*, Federal Communications Commission, February, 2018, at 9, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-18-10A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-10A1.pdf).

<sup>4</sup> *Id.* at 5. The bill could be clarified to make this limitation clearer.

<sup>5</sup> R.C. 122.97(B).

<sup>6</sup> R.C. 122.97(I).

<sup>7</sup> *Interactive Map*, Connect Ohio, <http://connectohio.org/interactive-map> (last visited April, 2, 2018).

<sup>8</sup> R.C. 122.973.



The bill defines "political subdivision" as a municipal corporation, township, county, school district, or any other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.<sup>9</sup>

### **The application**

The bill provides that an eligible applicant must submit an application to the DSA Director on a form that the Director prescribes. The application must include all of the following information:

- The location of the project area;
- The kind and amount of broadband infrastructure to be installed for the project, including proposed speeds;
- Evidence that the project area is an unserved area;
- The number of households that will have access to broadband service as a result of the project;
- Significant community institutions that will benefit from the project;
- The project's total cost;
- Sources of funding or in-kind contributions that will supplement any grant award;
- The amount of grant money being sought;
- For political subdivisions, evidence that not later than six weeks before submission of the application, the applicant wrote to all Internet service providers servicing the proposed project area (as depicted by the latest state broadband map) to ask for each Internet service provider's plan to provide, within 24 months of the writing, broadband service in the project area to the upload and download speeds that meet or exceed the FCC's benchmarks in the latest annual broadband progress report;
- Evidence of any responses by Internet service providers to the written inquiries;

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<sup>9</sup> R.C. 122.97(G); R.C. 122.9511, not in the bill.



- Evidence that the eligible applicant has the financial, technical, and managerial resources necessary to complete the project and provide ongoing maintenance and upgrades to the broadband infrastructure;
- A business plan demonstrating that the broadband service to be provided will be sustainable after the grant award is exhausted;
- Any additional information that the Director requests.<sup>10</sup>

The bill defines "project area" as an unserved area located within the state proposed to be served by broadband service through a grant issued under the Program.<sup>11</sup> "Internet service" is defined as Internet access service that serves end users primarily at fixed endpoints using stationary equipment, including fixed wireless services and fixed satellite services, but does not meet the benchmarks of the Federal Communications Commission's latest annual broadband progress report.<sup>12</sup> An "Internet service provider" is defined as an entity that provides Internet service.<sup>13</sup>

### **Evaluation of applications**

The bill requires the DSA Director to evaluate applications and award grants under the Program through a two-level prioritization process. First, the Director must classify and prioritize applications based on current Internet speeds in the project areas in the following order (from slowest to fastest), as depicted by the latest state broadband map:

- Project areas that have Internet service at speeds of less than 3 Mbps for downloads and 768 kilobits per second (kbps) for uploads;
- Project areas that have Internet service at speeds of 3 to 10 Mbps for downloads and 768 kbps to 1 Mbps for uploads;
- Project areas that have Internet service at speeds of 10 Mbps or greater for downloads and 1 Mbps or greater for uploads, but not greater than FCC's benchmarks in the latest annual broadband progress report.<sup>14</sup>

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<sup>10</sup> R.C. 122.974.

<sup>11</sup> R.C. 122.97(H).

<sup>12</sup> R.C. 122.97(C).

<sup>13</sup> R.C. 122.97(D).

<sup>14</sup> R.C. 122.975(A).





The Director must then further evaluate applications within each classification to give priority to applications that do any or all of the following:

- Offer new or substantially upgraded broadband service to important community institutions, including libraries, educational institutions, public safety facilities, and healthcare facilities;
- Facilitate the use of telemedicine and electronic health records;
- Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
- Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;
- Include a plan to promote the newly available broadband services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband service to a greater number of unserved households and businesses;
- Leverage greater amounts of funding for the project from public and private sources, including federal programs that provide financial support for the deployment of new broadband infrastructure;
- Encourage the development of new or existing industries through the use of broadband service.<sup>15</sup>

The bill requires the Director to endeavor to award grants to qualified applicants in geographically dispersed regions of the state.<sup>16</sup> The Director must also provide public notice of each grant awarded under the Program.<sup>17</sup>

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<sup>15</sup> R.C. 122.975(B).

<sup>16</sup> R.C. 122.975(C).

<sup>17</sup> R.C. 122.975(D).



### **Grounds for denying an application from a political subdivision**

The Director must deny an application of any political subdivision if an Internet service provider's written response to the political subdivision's required inquiry credibly demonstrates either of the following:

- The Internet service provider currently provides or has begun construction to provide broadband service in the project area at the minimum upload and download speeds that meet or exceed the FCC's benchmarks in the latest annual broadband progress report;
- The Internet service provider credibly commits to complete construction and provide broadband service, within 24 months of the inquiry, in the proposed project area at the minimum upload and download speeds that meet or exceed the FCC's benchmarks in the latest annual broadband progress report.<sup>18</sup>

If the Director denies funding to an applicant as a result of an Internet service provider's commitment to provide broadband service within 24 months and the Internet service provider does not fulfill its commitment, the Director is prohibited for the following two grant cycles from denying funding to an applicant in a project area on the basis of the same Internet service provider providing either of the two responses above. However, this prohibition does not apply if the Director determines the provider's failure was because of factors beyond the provider's control.<sup>19</sup>

### **Grant amounts to be rewarded**

The bill provides that grant amounts cannot exceed the lesser of: (1) 50% of the total project cost, or (2) \$5 million.<sup>20</sup>

### **Use of grant funds**

The bill requires grant recipients to use the funds to construct broadband infrastructure to provide broadband service to unserved areas. Construction must include the acquiring and installing new middle-mile or last-mile infrastructure. It may

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<sup>18</sup> R.C. 122.975(E).

<sup>19</sup> R.C. 122.975(F).

<sup>20</sup> R.C. 122.976.

also include obtaining construction permits, construction of facilities, purchasing equipment, and installation and testing of the broadband service.<sup>21</sup>

The bill defines "last-mile infrastructure" as broadband infrastructure that connects a broadband service provider's network to the end user customer's on-premise telecommunications equipment. "Middle-mile infrastructure" is broadband infrastructure that connects a broadband service provider's core network infrastructure to last-mile infrastructure.<sup>22</sup>

The bill also provides that if a recipient does not spend all of the funds awarded to the recipient, the DSA Director may, in his or her sole discretion, reallocate the unspent funds to other grant applicants, as long as the reallocation does not result in the total amount awarded to any single applicant exceeding the lesser of \$5 million or 50% of the total project cost.<sup>23</sup>

### **Challenging a grant award**

The bill establishes a process to permit an entity that provides broadband service in the state to challenge a Program grant award, on the basis that the entity already provides broadband service for that proposed project area.<sup>24</sup> A challenge must meet the following requirements:

- It must be made in writing;
- It must include evidence demonstrating that the entity provides broadband service in the proposed project area, including either (1) a Form 477 that the entity filed with the FCC for the current or preceding calendar year, or (2) invoices for broadband service subscriptions for the current or preceding calendar year within the proposed project area;
- The Director must receive the challenge no later than 30 days after public notice of the grant award.<sup>25</sup>

The entity making the challenge must also provide a copy of the challenge to the grant recipient.<sup>26</sup>

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<sup>21</sup> R.C. 122.972.

<sup>22</sup> R.C. 122.97(E) and (F).

<sup>23</sup> R.C. 122.977.

<sup>24</sup> R.C. 122.978.

<sup>25</sup> R.C. 122.979.



No later than 30 days after receiving a challenge, the Director must review it and do one of the following:

- Reject the challenge on the basis of incomplete or insufficient evidence of broadband service in the project area;
- Allow the grant recipient to revise its application to remove the challenged area from the proposed project, and then modify the grant award for the proposed project accordingly;
- Terminate the grant award and reallocate the funds to another applicant (see "**Use of grant funds**" above).<sup>27</sup>

### **Infrastructure ownership and responsibilities**

The bill provides that an applicant that receives a grant must own the infrastructures installed pursuant to the grant award, and must be responsible for ongoing maintenance and upgrades to the infrastructure.<sup>28</sup>

### **Appropriation**

The bill appropriates \$50 million per year for FYs 2018 and 2019 through the Third Frontier Research and Development Fund, which receives proceeds from the issuance of general obligation bonds. The appropriation must be used to award grants under the Program. One million dollars of the appropriation in each fiscal year must be used to contract with one or more independent organizations that have experience working with Ohio broadband providers to do the following:

- Collect broadband deployment data from Ohio broadband providers;
- Verify the data's accuracy through on-the-ground testing;
- Create annual state and county broadband maps that show the availability of broadband service at various upload speeds throughout the state;
- Analyze the data to help inform future investments in broadband infrastructure;

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<sup>26</sup> R.C. 122.9710.

<sup>27</sup> R.C. 122.9711.

<sup>28</sup> R.C. 122.9712.



- Conduct business and residential surveys that measure broadband adoption and use in the state;
- Engage communities and facilitate local technology planning to provide evidence of local support for grant projects and potential economic impacts of grant projects.<sup>29</sup>

### **Rule-making authority**

Under the bill, the DSA Director must adopt rules under Chapter 119. of the Revised Code necessary to implement the Program. The rules must include procedures governing the application and grant-award processes.<sup>30</sup>

### **"Research and development project" under Third Frontier Commission**

The bill provides that evaluating and overseeing the expansion of broadband service to unserved areas of Ohio is considered a "research and development" project under Third Frontier Commission law.<sup>31</sup> This effectively grants the Third Frontier Commission the discretion to allocate funds appropriated to it towards the Program, in addition to the appropriation made in this bill (see "**Appropriation**" above).

### **Laying fiber optic cable on or near state highways**

The bill encourages the Director of Transportation to work with telecommunications providers in an effort to lay fiber optic cable on or near state highways when creating or fixing existing state highways.<sup>32</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-10-17
Reported, H. Finance	03-21-18

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<sup>29</sup> Section 3.

<sup>30</sup> R.C. 122.9713.

<sup>31</sup> R.C. 184.10.

<sup>32</sup> R.C. 5511.11.

