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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 2
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Enacted

Primary Sponsors: Reps. Carfagna and Stewart

Local Impact Statement Procedure Required: No

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Highlights

- The bill creates the Ohio Residential Broadband Expansion Grant Program under the Development Services Agency (DSA) to support the last mile build-out of “tier one” and “tier two” residential broadband service.
- The bill creates the Ohio Residential Broadband Expansion Grant Program Fund (Fund 5GT0) and capitalizes it by a transfer of \$20.0 million from the Facilities Establishment Fund (Fund 7037) used by DSA. The funding is appropriated for FY 2021. If all the funding is not distributed in FY 2021, the bill allows for any remaining amount to be carried forward and used for grants in FY 2022.
- DSA will incur operating costs to start and oversee the grant program, including a new program manager and possibly other staff to help establish program guidelines, monitor awards, and enforce compliance. Since Fund 5GT0 may only be used to issue grants, DSA would need to locate other funding sources within its budget to cover any new administrative costs incurred under the bill.
- DSA will also incur costs to pay monthly stipends and reimburse expenses incurred by members of the Broadband Expansion Program Authority created by the bill. In total, monthly stipends could amount to a total of \$25,000 per year for the three appointed members of the five-member Authority. Members will also be compensated for actual and necessary expenses.
- The bill allows municipal corporations, townships, and counties to levy special assessments as a means of providing additional support for projects that are awarded funding under the Ohio Residential Broadband Expansion Grant Program.
- The bill declares an emergency and so goes into immediate effect.

Detailed Analysis

Overview

The bill creates the Ohio Residential Broadband Expansion Grant Program to support the expansion of broadband services across the state. The program would be overseen by the newly established Broadband Expansion Program Authority under the Development Services Agency (DSA). Under the program, grants would be awarded to qualified broadband service providers to cover the broadband funding gap to complete “last mile” broadband infrastructure to eligible projects. These projects are categorized as either “tier one” or “tier two” projects based on internet access speed and service area. Under the bill, political subdivisions would be able to provide gap funding for projects by levying assessments on properties benefitting from broadband expansion projects.

Funding and distribution of grants

The bill creates the Ohio Residential Broadband Expansion Grant Program Fund (Fund 5GT0) under DSA and capitalizes it via a transfer of \$20.0 million from the Facilities Establishment Fund (Fund 7037).¹ The bill appropriates this amount in FY 2021 under Fund 5GT0 appropriation item 195550, Broadband Development Grants. If there is funding remaining at the close of FY 2021, the bill authorizes any unexpended or unencumbered amount to be reappropriated for the same purpose in FY 2022.

The bill sets out guidelines for how the broadband grant money is to be used and distributed. It requires that the funding be used exclusively to issue program grants and that DSA issue grants until funds for the fiscal year are exhausted. There is no cap on individual grants under the program. Grant awards would be distributed according to the following disbursement schedule: (1) up to 30% may be disbursed before construction of the project begins, (2) up to 60% may be disbursed periodically over the course of construction, and (3) the remaining portion must be disbursed within 60 days after the broadband provider has completed construction. DSA is allowed to withhold grant payments for failure to meet at least the minimum speeds required until the required minimum service speeds are achieved.

Operating and oversight costs

DSA will incur operating costs to administer the Ohio Residential Broadband Expansion Grant Program. According to DSA, the agency would likely need to hire a program manager to run the initiative, and other staff might be needed for outreach, education, and administrative support. This would include: (1) adopting rules for the program and procedures for periodic program grant disbursements, (2) soliciting, on behalf of counties, after a request to do so, applications from broadband providers for grants under the program for eligible projects in the municipal corporations and townships of the county, (3) disbursing grants, and (4) developing a grant application scoring system in consultation with the Broadband Expansion Program

¹ Fund 7037 is used primarily to loan money to businesses for large-scale projects that will create or retain a significant number of jobs under the 166 Direct Loan Program. As of April 2020, the cash balance of Fund 7037 was \$227.7 million.

Authority. Finally, DSA would be able to contract with an independent third party to conduct speed verification tests of an eligible project that receives a program grant.

The newly created five-member Broadband Expansion Program Authority within DSA would be responsible for program governance and oversight. Under the bill, the Authority is responsible for monitoring the program, reviewing and scoring applications, and awarding grants. The Authority is also responsible for completing an annual report that evaluates the program's success and provides certain program information, findings, and recommendations. The membership would consist of the DSA Director or a designee, the InnovateOhio Director or a designee, and three members to be appointed by each of the Speaker of the House, Senate President, and Governor.

Under the bill, the three appointed members are entitled to a monthly stipend that will qualify each member for one year of retirement service credit under the Ohio Public Employees Retirement System. For FY 2021, this equates to a monthly amount of \$684.86. In total, the monthly stipend for the three appointed members amounts to nearly \$25,000 per year (\$684.46 x 12 months x 3 members). All five members are entitled to reimbursement for their actual and necessary expenses incurred doing work under the Authority.

In addition to the stipends and reimbursements, DSA could incur other administrative expenses related to the Authority such as providing office supplies, meeting space, and so forth. There could also be some new IT-related costs, including website updates, a grants software application, and a database for maintaining records and communicating with the stakeholders. Since Fund 5GTO is to be used exclusively for grants under the program, DSA would be required to locate another source of funding under its budget to pay for costs related to the Authority and any other staffing and administrative costs.

Local project funding generated by special assessments

The bill permits municipal corporations, townships, and counties to levy special assessments if a program grant is awarded for an eligible broadband service expansion project. Under the bill, a special assessment may be levied upon residential property within a municipal corporation, township, or county for the purpose of providing a contribution by the county towards the funding gap for the eligible project. Assessments may only be levied on property benefitting from the broadband project, and must be calculated so that the total assessment collected from these properties is no more than the county's or township's contribution toward the funding gap for the eligible project. The bill specifies the procedures a county or township must follow when levying the special assessment, including providing notice to affected residents, the procedure for residents to object the levy and the appeal process, certifying the assessment with the county auditor, and providing for a special fund where the proceeds of the assessment must be deposited.

Electric cooperatives

The bill also makes several changes in regards to access to electric cooperative easements and pole attachments. The bill allows an electric cooperative or provider to file a complaint regarding pole attachment disputes with the court of common pleas of the county in which the cooperative's Ohio headquarters is located provided that at least some portion of the attachment occurs in that county or, alternatively, the county in which the largest physical portion of the attachment will occur if the cooperative's Ohio headquarters is not located in a county in which

some portion of the attachment will occur, or there is more than one cooperative as a party. The bill also gives those courts jurisdiction to hear complaints and grant remedies under the bill regarding attachment disputes for which a complaint is filed. The number of new filings that could occur in a given court of common pleas each year is uncertain. However, any additional adjudication costs would at least be partially offset by the filing fees charged by the court. Filing fees are set by rule and amounts vary from court to court.

The other changes in the bill in regards to access to electric cooperative easements and pole attachments do not appear to have a fiscal effect. The bill expands the use of electric cooperative easements for the provision of broadband service and creates a process for addressing damages to servient estates. Additionally, it establishes a process for broadband providers, telecommunication providers, video service providers, and wireless service providers to request access to electric cooperatives' pole facilities. An electric cooperative is a not-for-profit, member owned utility service that provides service solely to its members. It is financially independent, and its members pay the full cost of generation, transmission, and distribution. The Public Utility Commission of Ohio does not have jurisdiction over electric cooperatives.

Emergency clause

The bill declares an emergency and therefore the bill's provisions will go into immediate effect.