OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 13
(l_133_0236-3)
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 13's Bill Analysis

Version: In House Finance

Primary Sponsors: Reps. Carfagna and O'Brien

Local Impact Statement Procedure Required: No

Shannon Pleiman, Senior Budget Analyst, and other LBO staff

Highlights

Ohio Residential Broadband Expansion Grant Program

- The bill creates the Ohio Residential Broadband Expansion Grant Program under the Department of Commerce (COM) to support the financing of broadband expansion projects in communities across the state. Broadband providers can apply for the grants to help pay for the last mile build-out of "tier one" and "tier two" residential broadband service. The tiers refer to internet access speeds defined in the bill.
- To fund the program, the bill creates the Ohio Residential Broadband Expansion Grant Program Fund (Fund 5WV0) and capitalizes it by a transfer of $20.0 million from the Facilities Establishment Fund (Fund 7037) used by the Development Services Agency. The funding is appropriated for FY 2021.
- COM will incur costs to pay monthly stipends and reimburse expenses incurred by the five 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 Authority.
- COM will incur operating costs to start and oversee the program. According to COM, a new program manager and possibly other staff would likely be needed to help establish program guidelines, monitor awards, and enforce compliance.

Sales and use tax exemption

Fund	FY 2021	FY 2022	Future Years
State General Revenue Fund			
Revenues	Potential loss of millions of dollars; additional loss of tens of millions from tax refunds	Potential loss of up to $9.7 million; additional loss of tens of millions from tax refunds	Potential loss of up to $9.7 million; additional loss of tens of millions from tax refunds
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)			
Revenues	Potential loss; additional loss from tax refunds	Loss of $0.3 million; additional loss from tax refunds	Loss of $0.3 million; additional loss from tax refunds
Counties and transit authorities			
Revenues	Potential loss; additional loss from tax refunds	Potential loss of up to $2.5 million; additional loss of millions of dollars from tax refunds	Potential loss of up to $2.5 million; additional loss of millions of dollars from tax refunds

Note: The state or school district fiscal year runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill expands an existing sales and use tax exemption for purchases of certain tangible personal property and services.
- The expansion may result in a state sales and use tax loss of up to $10 million annually. However, the initial fiscal costs could be tens of millions of dollars above the annual loss due to refunds allowed by a provision in the bill that would make tax exempt previous purchases that were assessed or currently subject to audits by the tax department.
- Under codified law, the state revenue loss would be shared by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.
- The bill also reduces revenue from local permissive county and transit authority sales taxes, which share the same tax base as the state sales and use tax.

Detailed Analysis

Ohio Residential Broadband Expansion Grant Program

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 Department of Commerce (COM). Under the program, grants are to be awarded to broadband service providers (defined by the bill as video service providers, telecommunications providers, satellite broadcast providers, or wireless service providers that are capable of providing tier one or tier two broadband service) to cover the broadband funding gap for "last mile" broadband infrastructure to eligible projects.

Eligible projects are those categorized as either "tier one" or "tier two" projects based on internet access speed. Under the bill, a "tier two" service refers to projects that offer broadband access to residences in an unserved area. "Tier one" service provides broadcast access to an area of a municipal corporation or township. Specifically, tier two broadband service refers to broadband capable of delivering internet access at speeds of at least 25 megabits per second downstream and at least three megabits per second upstream. Tier one broadband service refers to broadband that offers internet access at speeds of at least ten but less than 25 megabits per second downstream and at least one but less than three megabits per second upstream. A tier one area is an area with access to tier one service but not tier two service and includes an area where construction of a tier one service network is in progress and scheduled to be completed in two years.

Program funding and distribution of broadband expansion grants

To fund the program, the bill creates the Ohio Residential Broadband Expansion Grant Program Fund (Fund 5WV0) under COM and capitalizes it via a transfer of $20.0 million from the Facilities Establishment Fund (Fund 7037) used by the Development Services Agency (DSA). The bill appropriates this funding in FY 2021 under Fund 5WV0 appropriation item 800411, Residential Broadband Expansion Grants.

The bill requires that money in the fund be used exclusively to issue program grants and that COM issue grants until funds for the fiscal year are exhausted. There is no cap on individual grants under the program. The bill sets forth the following disbursement schedule for each program grant awarded: (1) not more than 30% of the grant may be disbursed before construction of the project begins, (2) not more than 60% of the grant may be disbursed periodically over the course of the construction of the eligible project, and (3) the remaining portion must be disbursed within 60 days after the broadband provider has completed the construction project. COM, however, is allowed to withhold grant payments for failure to meet at least the minimum speeds required until the required minimum service speeds are achieved.

Background on the Facilities Establishment Fund

The Facilities Establishment Fund is primarily used by DSA to provide loans under the 166 Direct Loan Program. Under that program, DSA awards loans to businesses as part of large-scale development deals, including the commitment of new or retained jobs by the company and a significant capital investment. The fund was initially capitalized through bond proceeds, but is now sustained by loan repayments under the 166 Direct Loan Program. As of May 2020, the cash balance of Fund 7037 was $297.3 million.

Operating and oversight costs

COM will incur operating costs to administer the program. According to COM, 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. Under the bill, 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 Authority. Finally, COM, would be able to contract with an independent third party to conduct speed verification tests of an eligible project that receives a program grant.

Oversight provided by the Broadband Expansion Program Authority

The newly created five-member Broadband Expansion Program Authority within COM 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 Authority membership consists of the COM Director, Chief Investment Officer of JobsOhio, and three members that are appointed by each of the Speaker of the House, Senate President, and Governor. Under the bill, COM is to (1) pay a monthly stipend of $684.86 (the FY 2021 amount that will qualify a person for one year of retirement credit with the Ohio Public Employees Retirement System) to each of the three appointed Authority members, and (2) reimburse actual and necessary expenses incurred by Authority members in performing the business of the Authority. In total, the monthly stipend for the three applicable Authority members amounts to nearly $25,000 per year ($684.46 x 12 months x 3 Authority members).

Additionally, COM may incur other administrative expenses related to the Authority such as providing office supplies, meeting space, etc. There could also be technology costs to administer the grant program including updating the website, a grants software application, a database for maintaining records, and communicating with the stakeholders. Since Fund 5WV0 is to be used exclusively for grants under the program, it is unclear what fund under the Department of Commerce's budget will pay for costs related to the Authority as well as any staffing and other program administrative costs.

Sales and use tax exemption

The bill expands an existing sales and use tax exemption for purchases of certain tangible personal property and services used directly and primarily in providing telecommunications, mobile telecommunications, or satellite broadcasting services (R.C. 5739.02(B)(34)). The sales and use tax exemption in current law is estimated to reduce GRF sales tax revenue by $151.3 million in FY 2021 by the tax department.

H.B. 13 specifically exempts services, tangible personal property, and component parts thereof used directly and primarily in "creating, distributing, provisioning, producing, conveying, monitoring, [or] routing" telecommunications service, mobile telecommunications service, "internet access service," or satellite broadcasting service. Thus, the bill broadens the scope of tangible property and services that would be tax exempt under sales and use tax law for the telecommunications industry. The expansion contemplated in the bill comes at a time when telecommunications companies are reportedly planning a substantial increase, billions of dollars in the aggregate nationwide, in their overall spending on tangible property and services over the next few years, mostly related to the fifth-generation (or "5G") networks of mobile communication.[1] Some of the planned spending will take place in Ohio and an unknown share of that spending is likely to be taxable under current sales and use tax law. Therefore, the bill results in an additional sales and use tax loss for this tax expenditure. The potential annual revenue decrease from the bill's provision may be up to $10 million, depending on the amount of capital deployed or services ultimately provided by vendors or used by telecommunications companies in Ohio.

In addition, the bill provides that the expanded exemption is retroactive and would apply to: (1) all refund claims submitted by purchasers on behalf of sales tax amounts paid prior to the bill's effective date, as long as the past purchase is within the four-year limitation prescribed in continuing law, (2) any current proceedings and pending cases in which a purchaser disputed the Department of Taxation's issuance of an assessment for uncollected sales tax, and (3) any transactions subject to an audit by the Department of Taxation pending on the bill's effective date. Therefore, if sales and use taxes were remitted on property and services made tax exempt by the bill, this provision will result in increased refunds claimed by sellers and users of property and services. If the vendors were not charging and remitting sales taxes, or buyers were not paying use taxes on property and services enumerated by H.B. 13, then the bill will prevent the tax department from collecting those amounts through its audits or other compliance and enforcement actions.

LBO cannot determine with any accuracy the potential revenue decrease from this provision, as only the Department of Taxation and the companies involved in audits or refund claims in the compliance and enforcement programs know how much money might be involved in those claims, assessments, and audits. Nevertheless, LBO cannot rule out that this provision in the bill might result in outsized revenue losses totaling tens of millions of dollars in the first years after enactment of the bill.

For FY 2021, for state taxes deposited in the GRF, revenue gains and losses generally would be shared by the GRF (96.62%), the Local Government Fund (LGF, 1.68%), and the Public Library Fund (PLF, 1.70%). Any receipts that would have been collected in subsequent fiscal years would be allocated differently under current law: the allocations of GRF tax revenue to each of the LGF and PLF would amount to 1.66%, their shares under codified law, starting in July 2021 (FY 2022). Thus, on an annual basis, the GRF loss would be up to $9.7 million, and distributions to the local funds would be reduced by up to $0.3 million.

The bill will also reduce revenue from local permissive county and transit authority sales taxes. Those local taxes share the same tax base as the state sales tax. At about 24.5% of state sales tax collections, the revenue reduction to permissive county and transit authorities' governments would total up to $2.5 million per year from the exemption expansion in the bill, and several millions from the refund provision.

---

[1] 5G technology requires upgraded cellular networks as well as devices capable of accessing these new networks. Equipment vendors supply the next generation antennas and base stations that power 5G networks while other types of companies lease antenna space on cell towers (e.g., 200-foot tall structures visible from a highway as well as small cell facilities about the size of a backpack) to telecommunications carriers. Applicable components may include radio frequency (RF) chips installed in 5G devices.

Other provisions

The bill also makes several changes in regards to (1) access to electric cooperative easements, (2) electric cooperative pole attachments, and (3) crossing railroad rights-of-way that do not seem to 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. Lastly, it establishes a process for video service providers and telephone companies to use railroad rights-of-way for a crossing.

Synopsis of Fiscal Effect Changes

The substitute bill (l_133_0236-3) consists of many changes to the As Introduced version of the bill. Please consult the LSC substitute bill comparative synopsis for a thorough review of all the provision changes compared to the prior version of the bill. Below is a list of highlights of the changes with fiscal effects noted on each topic.

- **State agency responsible for the program.** The bill moves the administration of the program from the Development Services Agency (DSA) to the Department of Commerce (COM). As a result, the administrative costs of overseeing the grant program shifts from DSA to COM. COM will likely need to hire a new program manager and possibly other staff to oversee the grant program. COM will also incur other administrative costs such as technology updates to its website, grant software application, and contracting with an independent third party to conduct speed verification tests of project grants. It is unclear in the bill what fund under COM's budget will be used to cover these costs.
- **Funding and appropriations.** The substitute bill creates the Ohio Residential Broadband Expansion Grant Program Fund (Fund 5WV0) and capitalizes it via a transfer of $20.0 million from the Facilities Establishment Fund (Fund 7037) used by DSA. The bill appropriates this funding under COM's budget in FY 2021 under Fund 5WV0 appropriation item 800411, Residential Broadband Expansion Grants. Fund 5WV0 is to be used exclusively for program grants. Funding under the As Introduced version of the bill was provided by a new fund called the Ohio Broadband Development Grant Fund (Fund 5GT0) and it was capitalized via a transfer of $2.0 million from unexpended, unencumbered cash from various sources to be identified within the DSA budget. The funding was appropriated for FY 2020 under the prior version of the bill.
- **Program terms and grant award process changes.** The substitute bill allows only broadband service providers to apply for the grant and defines eligible projects by defining two different tiers of broadband service. Also, the substitute bill requires COM to fund program grants until funds for that fiscal year are no longer available and there is no cap on individual grants under the program. Grants are reviewed by COM and the Broadband Expansion Program Authority and awarded based on a weighted scoring system. The substitute bill also sets forth a disbursement schedule for each program grant awarded over the course of the project. Under the prior version of the bill, cities, villages, and townships were the eligible grant recipients (called project sponsors). Additionally, the prior version of the bill (1) awarded grants on a first-come, first-served basis, (2) limited grants to one-third of the total project cost and provided that the

remaining two-thirds of the project can consist of a variety of funding sources including special property tax assessments in the project area, and (3) laid out a process for project sponsors to select a broadband provider through a competitively sealed request for proposal process.

- **Creation of Broadband Expansion Program Authority.** The substitute bill creates the Broadband Expansion Program Authority within COM to review applications and conduct other duties. The Authority consists of five members and requires COM to pay three Authority members monthly stipends, as well as reimburse their actual and necessary expenses incurred in performing the business of the Authority. In total, the monthly stipend for the three applicable Authority members amounts to nearly $25,000 per year.

- **Sales and use tax exemption changes.** The substitute bill makes changes to sales and use tax law. It broadens the scope of a current law sales and use tax exemption for services, tangible personal property equipment, and component parts thereof purchased by a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor. Thus, the bill reduces state and permissive county and transit authorities' sales taxes by millions of dollars annually. Moreover, the bill makes the expanded exemption a remedial measure applicable to prior taxable sales occurring in recent years, and allows refunds on previously remitted taxes. By doing so, the substitute bill creates additional sales tax losses in the first few years after enactment. This additional loss could be substantial. The As Introduced version of the bill contained no sales and use tax provisions.

HB0013H1/lb