

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 97
 Economic Matters

(Delegate Lierman, *et al.*)

Education, Health, and Environmental Affairs
 and Budget and Taxation

**Department of Housing and Community Development - Office of Statewide
 Broadband - Established (Digital Connectivity Act of 2021)**

This emergency bill establishes the Office of Statewide Broadband (OSB) within the Department of Housing and Community Development (DHCD) as the successor to the Office of Rural Broadband (ORB), albeit with expanded responsibilities. The Governor is required to include sufficient funding in the annual operating budget to employ two additional staff members. The bill establishes the Digital Inclusion Fund and the Digital Connectivity Fund within DHCD to provide grants to local governments and nonprofits to increase access to high-speed Internet and to assist in the development of affordable broadband Internet infrastructure, as specified. The bill also transfers the Rural Broadband Coordination Board (RBCB) and the Rural Broadband Assistance Fund (RBAF) from the Department of Commerce to OSB. **The bill terminates June 30, 2030.**

Fiscal Summary

State Effect: No effect in FY 2021. General fund expenditures increase by \$15.0 million annually beginning in FY 2022 to capitalize the new funds; special fund revenues and expenditures increase commensurately. To the extent that available federal funds are used instead, general fund expenditures are less, as discussed below. General fund expenditures further increase by \$1.5 million in FY 2022; future year expenditures reflect ongoing costs. **This bill establishes a mandated appropriation beginning in FY 2023.**

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
GF Expenditure	\$16,452,200	\$15,241,200	\$15,248,000	\$15,256,400	\$15,265,000
SF Expenditure	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
Net Effect	(\$16,452,200)	(\$15,241,200)	(\$15,248,000)	(\$15,256,400)	(\$15,265,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues and expenditures increase to the extent local governments apply for and receive grants for local broadband projects.

Small Business Effect: Minimal direct effect.

Analysis

Bill Summary/Current Law:

New Office of Statewide Broadband and the Existing Office of Rural Broadband

The stated purpose of OSB is to ensure that every resident of the State is supported in the adoption of reliable, universal, high-quality broadband Internet service at an affordable price and has the tools necessary to use the Internet and take advantage of Internet resources.

In 2017, [Executive Order 01.01.2017.14](#) established ORB within the Department of Information Technology; in 2020, the office was moved to instead be housed within DHCD. The purpose of ORB is to support the State's efforts to provide affordable, high-speed Internet service to every Maryland home. While ORB's responsibilities are generally broad, the bill establishes more detailed responsibilities for OSB. **Exhibit 1** illustrates the overlap and differences in the responsibilities of the two entities.

Exhibit 1 ORB Responsibilities vs. OSB Responsibilities

Office of Rural Broadband (ORB)

- Assist and support local Maryland jurisdictions in their improvement of access to high-speed Internet.
- Identify and coordinate the delivery of resources to local Maryland jurisdictions for the improvement of access to high-speed Internet, as specified.

Office of Statewide Broadband (OSB)

- Assist and support local jurisdictions in their efforts to improve access to broadband Internet, including the development and deployment of training programs, as specified.
- Identify and coordinate the delivery of resources to local jurisdictions for the improvement of access to broadband Internet, as specified.

Office of Rural Broadband (ORB)

- Work with local jurisdictions and economic-development organizations to identify areas with a demand for better Internet service.
- Identify opportunities for productive partnerships that enable sharing of resources and further the goal of expanding access to high-speed Internet.
- Investigate and identify new technologies that would increase the availability of high-speed Internet service in Maryland.
- Collect, analyze, and share relevant data.
- Develop recommendations for policy, regulations, or legislation, as specified.
- Support and complement the assessments, evaluations, studies, and other work of the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service and act consistently with the goals and purposes of the Connecting Rural Maryland Act of 2017.
- Oversee projects that increase the availability of high speed Internet service, including a demonstration project in Western Maryland and a demonstration project on the Eastern Shore, both of which will be completed by April 2018.

Office of Statewide Broadband (OSB)

- Work with local jurisdictions and economic development organizations to identify areas with a demand for better Internet service.
- Identify opportunities for productive partnerships that would enable the sharing of resources and further the goal of expanding access and connection to broadband Internet service.
- Investigate, identify, and evaluate new technologies that would increase the availability of broadband Internet service in the State.
- Collect, analyze, and publicly share relevant data, including specific metrics identified by the bill.
- Develop recommendations regarding policies, regulations, or legislation, as specified.
- Offer funding and technical assistance to help specified entities qualify for federal funding opportunities through specified partnerships.
- Work with the Community Development Administration to initiate a broadband funding structure, as specified.
- Prepare a statewide plan by July 1, 2022, to (1) ensure 98% connectivity to universal, affordable, reliable broadband Internet by December 31, 2025; (2) ensure that every resident of the State has the ability to connect to broadband Internet that exceeds the Federal Communications Commission (FCC)

Office of Rural Broadband (ORB)

- Submit an annual report to the Governor on the progress of the State's efforts to increase access to high-speed Internet and containing any relevant recommendations.

Office of Statewide Broadband (OSB)

standard for upload and download speeds by December 31, 2026; and (3) establish key performance indicators relating to infrastructure, adoption, and speed. OSB must submit the plan to the Governor and the General Assembly.

- Submit an annual report to the Governor and the General Assembly on the progress of the State's efforts to implement the statewide plan in addition to other specified information. The report must be published on the specified OSB website.
- Develop definitions and standards for broadband Internet that generally relate to the use of digital communications infrastructure and are not at odds with the definitions and standards adopted by FCC.
- Collect promotional and nonpromotional pricing data directly from broadband Internet providers and assess the actual upload and download speeds experienced by consumers.
- Create a statewide audit of the availability, reliability, and affordability of broadband Internet services in every county, which must include specified data.
- Create a website that houses a publicly accessible map that shows (in addition to any information provided by FCC) which residences do and do not have access to broadband Internet, prices and plans in different areas, and other available State geographic and demographic data.

Office of Rural Broadband (ORB)

Office of Statewide Broadband (OSB)

- Review existing laws, policies, and regulations regarding access to the rights-of-way and easements of public utilities and recommend changes to encourage the development of broadband Internet.
- Support efforts to increase the digital literacy of residents, nonprofit organizations, and business owners.
- Collaborate with local education agencies and community colleges to ensure that students have the ability to connect to broadband Internet that allows for full engagement in remote learning without disruptive lagging and periodic disconnection.
- Estimate and identify the amount and type of funding needed to connect residents to affordable high-speed Internet.
- Request information regarding total dollar investments in high-speed Internet from local jurisdictions, private companies, and organizations.

Source: Department of Legislative Services

In preparing the statewide plan, OSB must (1) solicit input from a diverse range of stakeholders, including libraries and workforce development boards; (2) consult with local governments, federal regulators, Internet service providers, and nongovernmental organizations involved in and working in the field of connecting communities to high-speed Internet and digital literacy; (3) hold at least two online listening sessions; and (4) receive written statements from stakeholders at a time OSB determines.

The Governor must appoint the director of OSB, who serves at the pleasure of the Governor and reports to both the Secretary of Housing and Community Development and the Governor. The director must work closely with the Secretary of Commerce and the State Superintendent of Schools to harmonize the efforts of OSB with the economic

development aspects of digital infrastructure and with the needs of local education agencies.

Through partnerships with specified entities, OSB must offer funding and technical assistance to help local governments and private entities (1) qualify for federal funding opportunities and (2) plan, design, and construct broadband infrastructure. To complement other sources of funding, OSB must work with the Community Development Administration to initiate a broadband funding structure.

In carrying out the bill's provisions, OSB must meet quarterly to collaborate with the appropriate units of State and local government, as specified, to ensure that efforts to expand and enhance broadband Internet services are coordinated statewide.

Nothing in the bill must be construed to preclude the Governor from developing a commission to coordinate efforts to establish high-speed Internet for all Marylanders.

The bill expresses the intent of the General Assembly that:

- the individual serving as director of ORB on July 1, 2021, become the first director of OSB;
- OSB is the successor of ORB; and
- in every law, executive order, rule, regulation, policy, or document created by an official, an employee, or a unit of the State, the names and titles of those agencies and officials mean the names and titles of the successor agency or official.

The bill does not affect the term of office of an appointed or elected member of any commission, office, department, agency, or other unit. An individual who is a member of a unit on the bill's effective date must remain for the balance of the term to which appointed or elected, unless the member sooner dies, resigns, or is removed under provisions of law.

The bill may not be construed to reduce the annual allocation of funds for rural broadband infrastructure expansion under OSB.

All duties and responsibilities associated with ORB's existing functions must continue under OSB. Employees transferred in this manner retain all rights, status, and merit system and retirement status they may have on the date of transfer.

The bill specifies that the continuity of every commission, office, department, agency, or other unit is retained by OSB. All files, furniture, fixtures, records, other properties, credits, liabilities, and obligations are also retained by OSB. Documents, including letterhead and business cards, reflecting the renaming of ORB to OSB under the bill may not be used until all documents already in print have been used.

Digital Inclusion Fund – Established

The bill establishes the Digital Inclusion Fund as a special, nonlapsing fund consisting of money appropriated by the State, financial assistance provided to the State by the federal government, interest earnings, and any other money from any other source accepted for the benefit of the fund. The purpose of the fund is to provide a competitive grant program to support capacity building for local governments and nonprofit organizations seeking to close the digital divide in Maryland by furthering access to high-speed Internet and to implement programs to expand digital literacy. OSB must administer the fund and work with other offices within DHCD and Commerce to adopt regulations specifying (1) procedures for applying for financial assistance and (2) priorities for allocating, selecting, and distributing financial assistance from the fund.

The fund may only be used to distribute grants not to exceed \$500,000 to local governments and nonprofit corporations that are working to further the goals of OSB, including (1) providing training to residents in the use of digital tools; (2) enhancing the capacity of communities to access government services, participate in civic matters, and pursue educational opportunities; (3) researching populations with low adoption rates for home Internet and computers; and (4) other digital inclusion or equity goals identified in the statewide plan. Money in the fund may not be used for increasing broadband Internet infrastructure.

Digital Connectivity Fund – Established

The bill also establishes the Digital Connectivity Fund as a special, nonlapsing fund consisting of money appropriated by the State, financial assistance provided to the State by the federal government, interest earnings, and any other money from any other source accepted for the benefit of the fund. The purpose of the fund is to assist in the establishment and expansion of affordable broadband communication services in disconnected areas and communities in the State. OSB must administer the fund and must adopt application procedures for grants distributed from the fund. OSB must work with other offices within DHCD and Commerce to adopt regulations specifying (1) procedures for applying for financial assistance and (2) priorities for allocating, selecting, and distributing financial assistance from the fund.

The fund may only be used to distribute competitive grants (1) for planning, construction, and maintenance of broadband communication services, equipment, and activities and (2) to provide financial assistance to local governments to expand high-speed Internet access in disconnected communities in the State.

Rural Broadband Assistance Fund and the Rural Broadband Coordination Board

Chapter 176 of 2018 made permanent Chapter 269 of 2006, which, among other things, established RBAF in Commerce (then the Department of Business and Economic Development) and requires RBCB to administer the fund. RBCB must, among other responsibilities, review and approve the disbursement of funds from RBAF and any other federal, State, and private financial resources that may be provided to assist the establishment of broadband communication services in rural and underserved areas of the State. The purpose of the fund is to assist in the establishment of broadband communication services in rural and underserved areas of the State.

Under current law, Commerce must administer the fund, which consists of (1) money appropriated in the State budget to the fund; (2) money appropriated in the State budget to the Maryland Economic Development Assistance Fund for the purpose of assisting in the establishment of broadband communication services in rural and underserved areas of the State; (3) federal money allocated or granted to the fund; and (4) any other money from any source accepted for the benefit of the fund. Under the bill, OSB must administer the fund, and the fund also consists of interest earnings. The fund may be used only for planning, construction, and maintenance of broadband communication services and equipment in rural and underserved areas and related activities. Under the bill, OSB must make payments from the fund within 30 days after notice of a decision by RBCB, as specified under the Economic Development Article. RBCB has not met since 2010, and the fund has not received State or federal funding since 2009.

State Expenditures: The Governor’s Office for Rural Broadband advises that costs for “last mile” installation (*e.g.*, the final portion of broadband installation that connects broadband Internet infrastructure to end-users) ranges between \$35,000 to \$70,000 per mile, or approximately \$3,000 to \$7,000 per house. In addition, according to a January 2021 report published by the Abell Foundation, approximately 520,000 State households do not have access to wireline broadband.

Despite the bill’s emergency status, this analysis assumes that there is no fiscal effect in fiscal 2021. Beginning in fiscal 2022, general fund expenditures increase by \$15.0 million to capitalize the Digital Inclusion Fund and the Digital Connectivity Fund. General fund administrative expenditures increase by an estimated \$1.5 million for DHCD to administer OSB and the new funds. These effects are discussed in more detail below.

Capitalization of the Digital Inclusion Fund and the Digital Connectivity Fund

The bill does not require a specific amount of funding to be appropriated to either the Digital Inclusion Fund or the Digital Connectivity Fund. However, given the high cost of expanding broadband Internet services to disconnected areas, this estimate assumes that

general fund expenditures increase by \$15.0 million annually beginning in fiscal 2022 to capitalize the two funds (\$5.0 million annually for the Digital Inclusion Fund and \$10.0 million annually for the Digital Connectivity Fund). The estimate for each fund is assumed to ensure the viability of the funds, in addition to providing meaningful grants to local governments and nonprofit organizations as they develop broadband Internet infrastructure and offer educational programming, as specified under the bill. Given the \$500,000 cap on grants from the Digital Inclusion Fund, the funding level allows for a minimum of 10 grants.

Special fund revenues to and expenditures from the funds increase correspondingly each year. The fiscal 2022 budget includes \$300.0 million in federal funds from the federal American Recovery Plan for broadband expansion efforts; to the extent that any of those funds are allocated to the two funds established by the bill, general fund expenditures are less.

This analysis assumes the existing RBAF does not receive additional funding under the bill, as it has not received funding since 2009.

Administrative Expenditures

DHCD advises that additional resources are necessary to collect the specified data and establish the website (that includes a publicly accessible map), develop and deploy a training program, manage the new funds, and implement the broadened responsibilities set forth in the bill. Though public maps already exist showing varying levels of broadband coverage in the State, they do not include the functionality or granularity that the bill requires (such as showing specific residences with and without broadband Internet). While the bill requires that the annual budget bill include an appropriation for two employees beginning in fiscal 2022, legislation cannot mandate an appropriation in the next fiscal year. However, the Department of Legislative Services concurs with DHCD that the broadened scope of OSB necessitates additional staff to carry out the office's new responsibilities and that those staff should be provided beginning in fiscal 2022.

Thus, general fund expenditures increase by \$1,452,226 in fiscal 2022, which assumes a start-up delay until July 1, 2021, despite the bill's emergency status. This estimate reflects the cost of hiring consultants to create the website and develop a training program and the cost of hiring (1) two administrators to administer OSB's expanded responsibilities and (2) one financial officer to oversee the funds. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$234,991
One-time Website Costs	900,000
One-time Training Course Costs	300,000
Ongoing Operating Expenses	<u>17,235</u>
Total FY 2022 Administrative Expenditures	\$1,452,226

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses (including annual website maintenance costs).

DHCD advises that ORB currently offers funding to help local governments and private entities qualify for federal funding opportunities; therefore OSB can handle this responsibility with existing resources.

Other affected State agencies can collaborate with OSB using existing budgeted resources. The Rural Maryland Council advises that it can continue to staff RBCB with existing resources.

Local Fiscal Effect: Local revenues increase to the extent local governments apply for and receive grants from the funds; local expenditures increase correspondingly as local governments spend the grants on broadband Internet inclusion and expansion projects.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 66 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): Department of Information Technology; Department of Commerce; Caroline, Howard, Montgomery, and Prince George’s counties, Maryland Association of Counties; Maryland Municipal League; Governor’s Office; Maryland State Department of Education; Baltimore City Community College; Maryland Department of Agriculture; Department of Housing and Community Development; Maryland Department of Planning; Maryland Department of Transportation; Department of Budget and Management; Governor’s Office of Rural Broadband; Rural Maryland Council; The Abell Foundation; Department of Legislative Services

Fiscal Note History:
rh/mcr

First Reader - January 22, 2021

Third Reader - April 5, 2021

Revised - Amendment(s) - April 5, 2021

Revised - Budget Information - April 5, 2021

Analysis by: Thomas S. Elder

Direct Inquiries to:

(410) 946-5510

(301) 970-5510