

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2512

To provide for the establishment of a Digital Opportunity Investment Trust.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2005

Mr. REGULA (for himself, Mr. MARKEY, and Mr. GILLMOR) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for the establishment of a Digital Opportunity Investment Trust.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Opportunity  
5 Investment Trust Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The United States stands to benefit in the  
9 global economy by reallocating additional airwave as-

1 sets to the private sector for innovative wireless serv-  
2 ices.

3 (2) Congress previously mandated reallocation  
4 of over 200 megahertz of frequency spectrum from  
5 Government use to the Federal Communications  
6 Commission for private sector licensing.

7 (3) This previous reallocation spurred deploy-  
8 ment of new digital wireless services, Government  
9 action that helped to lower prices, create jobs, and  
10 increase consumer choice.

11 (4) In addition, the use of auctions as an effi-  
12 cient mechanism to assign licenses generated funds  
13 that were deposited for general revenue purposes in  
14 the United States Treasury.

15 (5) Auction proceeds from the competitive bid-  
16 ding for wireless licenses can additionally be utilized  
17 to foster the use of educational technology, promote  
18 deployment of public telecommunications infrastruc-  
19 ture, and establish a self-sustaining trust fund for  
20 grants to transform education, skills training, and  
21 lifelong learning.

22 (6) While more and more Americans are uti-  
23 lizing electronic tools in every aspect of their lives,  
24 a digital divide still remains in many areas of our  
25 country and many citizens lack the skill set nec-

1        essary to compete for jobs in a 21st Century digital  
2        economy.

3            (7) Educational preparedness will be critical if  
4        the United States is to have a technologically savvy  
5        workforce to fuel growth of our high tech economy  
6        in the global marketplace.

7            (8) Utilizing spectrum auction proceeds to en-  
8        hance the use of educational technology and to in-  
9        crease public access to advanced telecommunications  
10       underscores our commitment to ensuring that all of  
11       our citizens are prepared for the new economy.

12           (9) The creation of a self-sustaining mechanism  
13       to make available annual funding for needed public  
14       access and educational technology grants is an ap-  
15       propriate use of revenue generated from corporate  
16       use of the public's airwaves and consistent with the  
17       public interest.

18           (10) A policy that promotes investment in wire-  
19       less technology and services along with a concomi-  
20       tant investment in the educational, cultural, and  
21       telecommunications resources available to all our  
22       citizens is in the national economic interest of the  
23       United States.

1 **SEC. 3. ESTABLISHMENT OF TRUST FUND.**

2 (a) AMENDMENT.—Part I of title III of the Commu-  
3 nications Act of 1934 is amended by inserting after sec-  
4 tion 309 (47 U.S.C. 309) the following new section:

5 **“SEC. 309A. DIGITAL OPPORTUNITY INVESTMENT TRUST**  
6 **FUND.**

7 “(a) ESTABLISHMENT.—There is established a non-  
8 profit corporation to be known as the ‘Digital Opportunity  
9 Investment Trust’ (referred to in this Act as the ‘Trust’)  
10 which shall not be an agency or establishment of the  
11 United States Government. The Trust shall be subject to  
12 the provisions of this section, and, to the extent consistent  
13 with this section, to the District of Columbia Nonprofit  
14 Corporation Act (D.C. Code, section 29–501 et seq.).

15 “(b) FUNDING.—

16 “(1) IN GENERAL.—There is established in the  
17 Treasury a separate fund to be known as the ‘Dig-  
18 ital Opportunity Investment Trust Fund’ (referred  
19 to in this Act as the ‘Trust Fund’). The Trust Fund  
20 shall contain such amounts as are credited to the  
21 Trust Fund under paragraph (2) and any interest  
22 earned on the investment of amounts in the Trust  
23 Fund under subsection (g).

24 “(2) DEPOSIT OF FUNDS.—The Trust Fund  
25 shall be credited with the amounts specified in—

26 “(A) section 309(j)(8)(E) of this Act; and

1           “(B) section 118(d)(3) of the National  
2           Telecommunications and Information Adminis-  
3           tration Organization Act.

4           “(c) BOARD OF DIRECTORS; FUNCTIONS, AND DU-  
5           TIES.—

6           “(1) IN GENERAL.—A board of directors of the  
7           Trust (referred to in this Act as the ‘Board’) shall  
8           be established to oversee the administration of the  
9           Trust. Such Board shall consist of 9 members to be  
10          appointed by the President, who—

11                  “(A) reflect representation from the public  
12                  and private sectors;

13                  “(B) are not regular full-time employees of  
14                  the Federal Government;

15                  “(C) are eminent in such fields as tele-  
16                  communications, information technology, labor  
17                  and workforce development, education, cultural  
18                  and civic affairs, or the arts and humanities;  
19                  and

20                  “(D) shall provide, as nearly as prac-  
21                  ticable, a broad representation of various re-  
22                  gions of the United States, various professions  
23                  and occupations, and various kinds of talent  
24                  and experience appropriate to the functions and  
25                  responsibilities of the Trust.

1           “(2) RECOMMENDATIONS.—The Majority Lead-  
2 er of the Senate, the Minority Leader of the Senate,  
3 the Speaker of the House of Representatives, and  
4 the Minority Leader of the House of Representatives  
5 shall submit to the President recommendations of  
6 individuals to serve as members of the Board.

7           “(3) TERMS OF APPOINTMENT.—

8           “(A) DATE.—Members of the Board shall  
9 be appointed not later than 90 days after the  
10 date of enactment of this Act.

11           “(B) TERMS.—

12           “(i) IN GENERAL.—Except as pro-  
13 vided in clause (ii), each member of the  
14 Board shall be appointed for a 3-year term  
15 with terms set to expire in non-Federal  
16 election years.

17           “(ii) STAGGERED TERMS.—With re-  
18 spect to the initial members of the  
19 Board—

20           “(I) 3 members shall serve for a  
21 term of 3 years;

22           “(II) 3 members shall serve for a  
23 term of 2 years; and

24           “(III) 3 members shall serve for  
25 a term of 1 year.

1           “(C) VACANCIES.—A vacancy in the mem-  
2           bership of the Board shall not affect the  
3           Board’s powers, and shall be filled in the same  
4           manner as the original member was appointed.

5           “(4) CHAIR AND VICE-CHAIR.—

6           “(A) SELECTION.—The Board shall select,  
7           from among the members of the Board, an indi-  
8           vidual to serve for a 2-year term as Chair of the  
9           Board and an individual to serve for a 2-year  
10          term as vice-Chair of the Board.

11          “(B) CONSECUTIVE TERMS.—An individual  
12          may not serve for more than 3 consecutive  
13          terms as Chair of the Board.

14          “(5) MEETINGS.—

15          “(A) FIRST MEETING.—Not later than 30  
16          days after the date on which all of the members  
17          of the Board have been appointed by the Presi-  
18          dent, the Chair of the Board shall call the first  
19          meeting of the Board.

20          “(B) QUORUM.—A majority of the mem-  
21          bers of the Board shall constitute a quorum,  
22          but a lesser number of members may hold hear-  
23          ings.

24          “(6) BOARD PERSONNEL MATTERS.—

1           “(A) COMPENSATION.—Members of the  
2 Board shall not receive compensation, allow-  
3 ances, or benefits by reason of the members’  
4 service on the Board.

5           “(B) TRAVEL EXPENSES.—The members  
6 of the Board shall be allowed travel expenses,  
7 including per diem in lieu of subsistence, at  
8 rates authorized for employees of agencies  
9 under subchapter I of chapter 57 of title 5,  
10 United States Code, while away from their  
11 homes or regular places of business in the per-  
12 formance of services for the Board.

13           “(C) SALARIES AND EXPENSES.—No offi-  
14 cer or employee of the Trust may be com-  
15 pensated by the Trust at an annual rate of pay  
16 which exceeds the rate of basic pay in effect for  
17 level I of the Executive Schedule under section  
18 5312 of Title 5, United States Code.

19           “(7) DIRECTOR.—A majority of the members of  
20 the Board shall select a Director of the Trust who  
21 shall serve at the discretion of the Board and shall  
22 be responsible for instituting procedures to carry out  
23 the policies and priorities established by the Board,  
24 and for hiring all personnel of the Trust.

1           “(8) ADDITIONAL REQUIREMENTS AND LIMITA-  
2           TIONS.—

3           “(A) FIDELITY.—No individual other than  
4           a citizen of the United States may be an officer  
5           of the Trust. No officer of the Trust may re-  
6           ceive any salary or other compensation (except  
7           for compensation for services on boards of di-  
8           rectors of other organizations that do not re-  
9           ceive funds from the Trust, on committees of  
10          such boards, and in similar activities for such  
11          organizations) from any sources other than the  
12          Trust for services rendered during the period of  
13          his or her employment by the Trust. Service by  
14          any officer on boards of directors of other orga-  
15          nizations, on committees of such boards, and in  
16          similar activities for such organizations shall be  
17          subject to annual advance approval by the  
18          Board and subject to the provisions of the  
19          Trust’s Statement of Ethical Conduct. All offi-  
20          cers shall serve at the pleasure of the Board.

21          “(B) NONPARTISANSHIP.—No political test  
22          or qualification shall be used in selecting, ap-  
23          pointing, promoting, or taking other personnel  
24          actions with respect to officers, agents, and em-  
25          ployees of the Trust. The Trust may not con-

1           tribute to or otherwise support any political  
2           party or candidate for elective public office.

3           “(C) NONPROFIT NATURE OF THE  
4           TRUST.—The Trust shall have no power to  
5           issue any shares of stock, or to declare or pay  
6           any dividends. No part of the income or assets  
7           of the Trust shall inure to the benefit of any di-  
8           rector, officer, employee, or any other individual  
9           except as salary or reasonable compensation for  
10          services.

11         “(d) TRUST FUND USES.—

12           “(1) USES OF FUNDS.—To achieve the objec-  
13          tives of this Act, the Director of the Trust, after  
14          consultation with the Board, may use Trust funds—

15           “(A) to help underwrite the digitization of  
16          the collections in the Nation’s universities, mu-  
17          seums, libraries, public broadcasting stations,  
18          and cultural institutions;

19           “(B) to support basic and applied re-  
20          search, development, and demonstrations of in-  
21          novative learning and assessment systems as  
22          well as the components and tools needed to cre-  
23          ate them; and

24           “(C) to use the research results developed  
25          under subparagraph (B) to create prototype ap-

1           plications designed to meet learning objectives  
2           in a variety of subject areas and designed for  
3           learners with many different educational back-  
4           grounds, including—

5                   “(i) strengthening instruction in read-  
6                   ing, science, mathematics, history, and the  
7                   arts in elementary and secondary schools,  
8                   particularly in academically struggling  
9                   school districts;

10                   “(ii) providing the training needed for  
11                   people now in the workplace to advance in  
12                   a constantly changing work environment;

13                   “(iii) training needed for teachers to  
14                   utilize new tools and technologies in the  
15                   classroom; and

16                   “(iv) instruction in community cen-  
17                   ters, libraries, community colleges, univer-  
18                   sities, other institutions of higher edu-  
19                   cation, and through public television and  
20                   radio stations;

21                   “(v) supporting projects that enhance  
22                   the access of individuals with disabilities to  
23                   advanced telecommunications services; and

1           “(vi) supporting after-school programs  
2           with youths focused on computer literacy  
3           and education.

4           “(2) CONTRACTS AND GRANTS.—

5           “(A) IN GENERAL.—In order to carry out  
6           the activities described in paragraph (1), the  
7           Director of the Trust, with the agreement of a  
8           majority of the members of the Board, may  
9           award contracts and grants to nonprofit organi-  
10          zations and public institutions (with or without  
11          private partners).

12          “(B) PUBLIC DOMAIN.—

13          “(i) IN GENERAL.—The research and  
14          development properties and materials asso-  
15          ciated with a project in which a majority  
16          of the funding used to carry out the  
17          project is from a grant or contract under  
18          this Act shall be freely and nonexclusively  
19          available to the general public in a timely  
20          manner.

21          “(ii) EXEMPTION.—The Director of  
22          the Trust may exempt specific projects  
23          from the requirement of clause (i) if the  
24          Director of the Trust and a majority of the  
25          members of the Board determine that the

1           general public will benefit significantly due  
2           to the project not being freely and non-  
3           exclusively available to the general public  
4           in a timely manner.

5           “(C) PEER REVIEW.—To the extent prac-  
6           ticable, proposals for grants or contracts shall  
7           be evaluated on the basis of comparative merit  
8           by panels of experts who represent diverse in-  
9           terests and perspectives, and who are appointed  
10          by the Director of the Trust from recommenda-  
11          tions from the fields served and from the Board  
12          of Directors.

13          “(e) SPECIAL ACCOUNT FOR DISTRIBUTION TO EDU-  
14          CATIONAL TELEVISION STATIONS.—

15                 “(1) RESERVATION.—An amount equivalent to  
16                 21 percent of the interest derived from the invest-  
17                 ment proceeds of the amounts deposited in the Trust  
18                 Fund under section 309(j)(8)(E) of this Act shall be  
19                 reserved in a special account within the Trust Fund  
20                 for distribution on a regular basis to those non-  
21                 commercial educational television broadcast stations  
22                 (as defined in section 397(6) of this Act that are  
23                 qualified to receive grants from the Corporation for  
24                 Public Broadcasting pursuant to section

1 396(k)(6)(B) of this Act and to the Public Broad-  
2 casting Service in partnership with such stations.

3 “(2) RESPONSIBILITY FOR DISTRIBUTION.—

4 The Director of the Trust shall—

5 “(A) through a special contract, designate  
6 the Corporation for Public Broadcasting as the  
7 sole agent responsible for the distribution of  
8 funds under this section; and

9 “(B) transfer the funds referred to in  
10 paragraph (1) to the Corporation for Public  
11 Broadcasting on a regular basis.

12 “(3) GRANTS.—In making the distribution re-  
13 ferred to in paragraph (1), the Corporation for Pub-  
14 lic Broadcasting shall utilize a competitive grant ap-  
15 plication process that is governed by criteria that en-  
16 sures that funds are directed to the creation of lo-  
17 cally delivered digital education and learning serv-  
18 ices, ensures the diversity of licensee types, and en-  
19 sures that geographic service areas are adequately  
20 served. The Corporation for Public Broadcasting  
21 shall develop such criteria in consultation with public  
22 television licensee permittees and representatives  
23 designated by their national organizations.

24 “(f) ACCOUNTABILITY AND REPORTING.—

25 “(1) REPORT.—

1           “(A) IN GENERAL.—Not later than April  
2           30 of each year, the Director of the Trust shall  
3           prepare a report for the preceding fiscal year  
4           that contains the information described in sub-  
5           paragraph (B).

6           “(B) CONTENTS.—A report under sub-  
7           paragraph (A) shall include—

8                   “(i) a comprehensive and detailed re-  
9                   port of the Trust’s operations, activities, fi-  
10                  nancial condition, and accomplishments,  
11                  and such recommendations as the Director  
12                  of the Trust determines appropriate;

13                   “(ii) a comprehensive and detailed in-  
14                  ventory of funds distributed from the  
15                  Trust during the fiscal year for which the  
16                  report is being prepared; and

17                   “(iii) an independent audit of the  
18                  Trust Fund’s finances and operations, and  
19                  of the implementation of the goals estab-  
20                  lished by the Board.

21           “(C) STATEMENT OF THE BOARD.—Each  
22           report under subparagraph (A) shall include a  
23           statement from the Board containing—

24                   “(i) a clear description of the plans  
25                  and priorities of the Board for the subse-

1                   quent 5-year period for expenditures from  
2                   the Trust Fund; and

3                   “(ii) an estimate of the funds that will  
4                   be available for such expenditures from the  
5                   Trust Fund.

6                   “(D) SUBMISSION TO THE PRESIDENT AND  
7                   CONGRESS.—A report under this subsection  
8                   shall be submitted to the President and the  
9                   Committee on Energy and Commerce of the  
10                  House of Representatives and the Committee  
11                  on Commerce, Science, and Transportation of  
12                  the Senate.

13                  “(2) TESTIMONY.—The Director and principal  
14                  officers of the Trust shall testify before the appro-  
15                  priate committees of Congress, upon request of such  
16                  committees, with respect to—

17                         “(A) a report prepared under paragraph  
18                         (1)(A); and

19                         “(B) any other matter that such commit-  
20                         tees may determine appropriate.

21                  “(g) INVESTMENT OF TRUST FUNDS.—

22                         “(1) IN GENERAL.—The Secretary of the  
23                         Treasury, after consultation with the Director of the  
24                         Trust, shall invest the funds of the Trust in interest-  
25                         bearing obligations of the United States or in obliga-

1 tions guaranteed as to both principal and interest by  
2 the United States.

3 “(2) EXPENDITURES.—

4 “(A) IN GENERAL.—The Director of the  
5 Trust shall not undertake grant or contract ac-  
6 tivities under this Act until the Trust has re-  
7 ceived the interest or other proceeds from the  
8 investment of the Trust Funds for not less than  
9 1 year’s duration. Thereafter, upon Board ap-  
10 proval of the annual budget of the Trust, the  
11 Director of the Trust may commence such  
12 grant or contract activities at the start of each  
13 fiscal year.

14 “(B) OBLIGATION OF FUNDS.—

15 “(i) IN GENERAL.—Except as pro-  
16 vided in clauses (ii) and (iii), in awarding  
17 grants or contracts or making other ex-  
18 penditures under this Act, the Director of  
19 the Trust shall not obligate funds from the  
20 Trust that exceed the proceeds received  
21 from the investment of the funds in the  
22 Trust Fund during the preceding fiscal  
23 year.

24 “(ii) CARRY OVER.—Funds from the  
25 Trust Fund that are available for obliga-

1           tion for a fiscal year that are not obligated  
2           for such fiscal year shall remain available  
3           for obligation for the succeeding fiscal  
4           year.

5           “(iii) AVAILABILITY FOR AUDIT.—A  
6           portion of the proceeds received from the  
7           investment of the funds in the Trust Fund  
8           during any fiscal year shall be available for  
9           the conduct of the audit for such fiscal  
10          year required by subsection (f)(1)(B)(iii).

11          “(h) USE OF FUNDS SUBJECT TO APPROPRIA-  
12          TIONS.—The authority to make grants or enter into con-  
13          tracts or otherwise to expend funds under this section is  
14          subject to such amounts as are provided in advance in ap-  
15          propriations Acts.”.

16          (b) CONFORMING AMENDMENTS.—

17                  (1) COMMUNICATIONS ACT OF 1934.—Section  
18          309(j)(8) of the Communications Act of 1934 (47  
19          U.S.C. 309(j)(8)) is amended—

20                          (A) in subparagraph (A), by striking “sub-  
21                          paragraph (B) or subparagraph (D)” and in-  
22                          serting “subparagraph (B), (D), or (E)”; and

23                          (B) by adding at the end the following new  
24                          subparagraph:

1           “(E) ADDITIONAL DISPOSITION.—Except  
2           as provided in subparagraph (D), 30 percent of  
3           the cash proceeds of each auction completed  
4           after September 30, 2007, and through the last  
5           quarter of fiscal year 2027, shall be deposited  
6           in the Digital Opportunity Trust Fund estab-  
7           lished under section 309A of this Act, and shall  
8           be available in accordance with that section.”.

9           (2) NTIAO ACT.—Paragraph (3) of section  
10          118(d) of the National Telecommunications and In-  
11          formation Administration Organization Act is  
12          amended to read as follows:

13           “(3) TRANSFER OF UNUSED FUNDS.—Any auc-  
14          tion proceeds in the Fund that are remaining after  
15          the payment of the relocation costs that are payable  
16          from the Fund shall, not later than 8 years after the  
17          date of the deposit of such proceeds to the Reloca-  
18          tion Trust Fund, be transferred to the Digital Op-  
19          portunity Trust Fund established under section  
20          309A of this Act, and shall be available in accord-  
21          ance with that section.”.

○