

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 945 Broadband Internet Service

**SPONSOR(S):** Appropriations Committee, Holder

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 1 N	Keating	Collins
2) Economic Affairs Committee	15 Y, 0 N	Fennell	Tinker
3) Appropriations Committee	20 Y, 0 N, As CS	Topp Davis	Leznoff
4) State Affairs Committee			

### SUMMARY ANALYSIS

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities. In 2009, the Legislature authorized the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida.
- Create a strategic plan to increase use of broadband Internet service in Florida.
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.

In 2011, the Legislature created the Department of Economic Opportunity (DEO) “to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.”

HB 945 replaces DMS with DEO as the agency responsible for implementing the state’s broadband program and designates DEO as the single state entity to receive and manage all federal State Broadband Initiative (SBI) funds. Further, the bill:

- Requires DEO to establish a public-private partnership that will work collaboratively with the entities with which DMS is currently required to work and adds “nonprofit corporations” to this list of entities.
- Adds community development as a goal of sustainable broadband adoption.
- Requires that DEO’s strategic plan to increase use of broadband Internet service in Florida be developed with the use of consumer research into residential and business technology utilization data.
- Specifies that broadband mapping efforts conducted under DEO must, at a minimum, identify transmission speeds and unserved and underserved areas at the census block level of detail.

The bill provides a process for the DMS to request federal approval to transfer the grant program and funding award to DEO and upon such approval, request a budget amendment requiring Legislative Budget Commission (LBC) approval to transfer all funds. LBC approval will initiate a type two transfer of all funds and authority of the program from DMS to DEO.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0945e.APC

DATE: 2/15/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

In 2008, Congress passed the Broadband Data Improvement Act<sup>1</sup> to improve the quality of federal and state data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the nation. In early 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has “access to broadband capability.” Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance “consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.”<sup>2</sup> The Plan developed by the FCC can be found at <http://www.broadband.gov/plan/>.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities, focusing on schools, libraries, health care, educational institutions, non-profit community organizations, and the construction of broadband infrastructure. Two federal agencies are handling the distribution of broadband grants/awards through an application process. The U.S. Department of Agriculture's Rural Utilities Service (RUS) was authorized to make loans and grants totaling \$2.5 billion for broadband infrastructure projects in rural areas through its Broadband Initiatives Program (BIP). The U.S. Department of Commerce's National Telecommunications Information Administration (NTIA) was authorized to provide grants totaling \$4.7 billion to fund comprehensive broadband infrastructure projects, public computer centers, and sustainable broadband adoption projects through its Broadband Technology Opportunities Program (BTOP).

In 2009, the Legislature authorized the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida.
- Create a strategic plan to increase use of broadband Internet service in Florida.
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.<sup>3</sup>

Current law provides that “[t]he Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.”<sup>4</sup>

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<sup>1</sup> Broadband Data Improvement Act, Pub. L. No. 110-385, S. 1492, 122 Stat. 4096.

<sup>2</sup> See <http://www.broadband.gov/plan/executive-summary/>.

<sup>3</sup> Section 364.0135, F.S.

<sup>4</sup> Section 364.0135(1), F.S.

In 2009, the NTIA launched the State Broadband Initiative (SBI) to implement the purposes of the ARRA and the Broadband Data Improvement Act. According to the NTIA's SBI website,<sup>5</sup> twelve separate entities within Florida have been awarded a combined total of \$183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects. Among those awards, DMS was awarded a total of \$8,877,028<sup>6</sup> for the following purposes:

- Provide technical assistance to Florida anchor institutions for the E-rate program for increasing school and library telecommunications funding to procure services and technology from the private sector.
- Develop regional planning teams, in partnership with the Florida Regional Planning Councils, to assist in local and regional broadband planning.
- Provide further funding opportunity development and assistance to anchor institutions to secure additional funding to expand broadband usage throughout the state from the private sector.
- Provide for broadband data inventory, analysis and mapping.
- Provide technology assessments to libraries to increase funding to purchase broadband from the private sector.

With some of the funds provided through the ARRA, DMS partnered with a national organization called Connected Nation<sup>7</sup> to map landline and wireless broadband services using information from service providers and other sources. This mapping project is intended to better identify the location of Florida's unserved and underserved areas. The efforts of this project can be found at <http://www.connect-florida.org/>.

In addition to its role in promoting broadband service adoption, DMS, through its Division of Telecommunications, has managed a number of telecommunications service programs for the state. According to DMS, the duties of its Division of Telecommunications include the following:

- Implementing SUNCOM, the state enterprise telecommunications system for providing local and long-distance communications services to state agencies, political subdivisions of the state, municipalities, and nonprofit corporations.<sup>8,9</sup>
- Managing public safety communications planning, coordination, and procurement, including the Statewide Law Enforcement Radio System (SLERS) and contract.<sup>10</sup>
- Managing 911 communications and technology planning and coordination, and managing related grants.<sup>11</sup>

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."<sup>12</sup> To accomplish this purpose, DEO is provided the following duties:

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain

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<sup>5</sup> <http://www2.ntia.doc.gov/SBDD>

<sup>6</sup> <http://www2.ntia.doc.gov/grantee/florida-department-of-management-services>. According to DMS, it also developed and applied for a broadband adoption grant under the BTOP on two occasions using a "community development" model proposed by Connected Nation (see footnote below), though both applications, along with applications from other states proposing similar programs, were denied.

<sup>7</sup> Connected Nation is a nonprofit corporation whose Board of Directors is represented by CTIA-The Wireless Association, the Telecommunications Industry Association, the American Farm Bureau Federation, The Children's Partnership, and Intel. Its work is directed by the Board and a National Advisory Council comprised of a number of telecommunications companies and industry organizations, technology companies, and nonprofit organizations. The full list of members can be found at [http://connectednation.org/who\\_we\\_are/national\\_advisors/](http://connectednation.org/who_we_are/national_advisors/).

<sup>8</sup> Section 282.703, F.S. The SUNCOM Network must be developed to transmit all types of telecommunications signals, including, but not limited to, voice, data, video, image, and radio.

<sup>9</sup> According to DMS, SUNCOM represents a public-private model in which over 95% of the budget is outsourced to telecommunications vendors in the state.

<sup>10</sup> Section 282.709, F.S.

<sup>11</sup> Section 365.171, F.S.

<sup>12</sup> Section 1, ch. 2011-142, Laws of Florida.

businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.

- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.<sup>13</sup>

### **Effect of Proposed Changes**

The bill replaces the Department of Management Services (DMS) with the Department of Economic Opportunity (DEO) as the state's single designated entity to receive and manage all federal State Broadband Initiative (SBI) funds. As discussed in the Fiscal Comments section, below, a transfer of grant funds previously awarded to DMS would require approval by the SBI.

The bill requires DEO to establish a public-private partnership that will work collaboratively with the same list of entities that DMS currently works with (i.e., Enterprise Florida, state agencies, local governments, private businesses, and community organizations), and the bill adds "nonprofit corporations" to this list of entities. The bill does not specify the type of private entity that DEO should consider in developing a public-private partnership (as opposed to those private entities with which the partnership must work collaboratively).

The bill also modifies the existing legislative finding in s. 364.0135(1), F.S., to state that "that the sustainable adoption of broadband Internet service is critical to the economic, business, *and community* development of the state ...."

The bill provides that DEO's strategic plan to increase use of broadband Internet service in Florida must be "developed with the use of consumer research into residential and business technology utilization data ...." Further, the bill specifies that broadband mapping efforts conducted under DEO must "at a minimum" identify transmission speeds and unserved and underserved areas at the census block level of detail. Current law provides that these areas be identified at the census tract level. This will require mapping at a higher level of detail.

Finally, the bill outlines a process by which the Broadband Initiative Program would transfer from DMS to DEO. First, DMS, in consultation with DEO, shall submit a request to the U.S. Department of Commerce to transfer the federal grant award for the program. Upon approval of such request, DMS must then submit a budget amendment requiring LBC approval, transferring these grant funds. With LBC approval, a type two transfer becomes effective, thereby transferring all powers, duties, functions, records, offices, property, pending issues, existing contracts, administrative authority and rules, unspent appropriations, allocations and funds of this program to DEO.

## **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 364.0135, F.S., relating to promotion of broadband adoption.

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<sup>13</sup> Section 20.60(4), F.S.

**Section 2.** Provides for a type two transfer from DMS to DEO of specified authority and funding associated with the Broadband Initiative Program.

**Section 3.** Provides for a process for the DMS to request federal approval to transfer the grant program and funding award to DEO, and upon such approval, request a budget amendment to transfer all funds.

**Section 4.** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

### D. FISCAL COMMENTS:

Currently, the Department of Management Services (DMS) is the sole entity designated by the State of Florida to accept funds under the federal State Broadband Initiative (SBI) program. To maintain the grants awarded to DMS to date, a transfer of these awards to a new entity would require approval by the SBI within the U.S. Department of Commerce.<sup>14</sup> According to DMS, the SBI has approved two transfers, and the process may require significant work and lead time for the existing grantee, new grantee, and the SBI office. DMS also indicates that, to achieve approval of such a transfer, the grant award must be transferred in its entirety to the new entity, and the new entity must continue the same work as set forth in the original award. DEO has indicated that they plan to continue the grant in the exact manner as set forth in the original award.

Contingent upon necessary approvals by the U.S Department of Commerce and the Legislative Budget Commission, all funding allocations and necessary authority related to this program are transferred from DMS to DEO.

According to DMS, however, if the SBI does not approve the transfer of these grant awards from DMS to the Department of Economic Opportunity, local governments could incur a loss of \$502,000 through broadband planning with regional planning councils and a potential loss of new funds for expanding broadband technology to schools and libraries due to the loss of technical assistance in seeking these funds. DMS also indicates that if the SBI does not approve the transfer, funding of \$630,889 for

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<sup>14</sup> See U.S. Department of Commerce Grants Manual, Chapter 16, W., *Transfer of Award*.

broadband inventory and mapping services provided under contract could be lost. However, DEO does not have any reason to believe the SBI would not approve the transfer as they have sufficient existing staff and plan to implement the grant in the exact manner as set forth in the original award.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill transfers from DMS to DEO the existing authority to adopt rules to implement s. 364.0135, F.S. To date, DMS has not adopted rules to implement this section.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 15, 2012, the Appropriations Committee adopted one amendment which would provide for the following:

- A type two transfer from DMS to DEO of specified authority and funding associated with the Broadband Initiative Program;
- DMS (in consultation with DEO) submit a request to the U.S. Department of Commerce to transfer the federal grant;
- Upon federal approval, DMS submit a budget amendment to transfer funds with LBC approval;
- Specifying an effective date of upon becoming law to initiate this transfer with federal government approval, while the actual transfer of the grant award is effective upon LBC approval.

The analysis is drawn to the bill as amended.