

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1239 Broadband Internet Infrastructure
SPONSOR(S): Commerce Committee, Ways & Means Committee, Tomkow and others
TIED BILLS: **IDEN./SIM. BILLS:** None

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1239 passed the House on April 26, 2021, as amended. The bill was amended in the Senate on April 27, 2021, and was returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 28, 2021. The bill includes portions of CS/HB 753, HB 1339, CS/CS/SB 1592, and CS/CS/SB 1560.

The bill creates two new programs to support the expansion of broadband Internet service to consumers without access to service.

First, the bill creates a program within the Florida Office of Broadband (Office), within the Department of Economic Opportunity (DEO) to award grants, subject to appropriation, to applicants who seek to install or deploy infrastructure that expands broadband service to unserved areas. The bill specifies the types of entities eligible for such grants, provides application requirements and evaluation criteria, and requires the Office to enter into an agreement with each grant recipient that specifies performance conditions, including potential sanctions. The bill establishes a process by which an existing broadband provider may challenge a grant application on the grounds that the provider already offers or plans to offer service in the area at issue. The bill provides limitations on grant awards and requires the Office to prepare an annual report summarizing the activity under this program.

Second, the bill requires municipal electric utilities, through July 1, 2024, to offer broadband service providers a discounted rate of \$1 per attachment per year for any new pole attachment necessary to make broadband service available to an unserved or underserved consumer within the utility's service territory. The bill provides terms for these discounted attachments. The bill also provides safety and reliability standards for pole attachments and specifies each party's responsibility for costs associated with replacement poles necessary to make attachments. The bill prohibits municipal electric utilities from raising their current pole attachment rates for broadband providers before July 31, 2022.

The bill amends and creates definitions applicable to these programs and provides DEO with rulemaking authority to implement these programs.

The bill requires local technology planning teams established by the Office to work with rural communities to help identify unserved and underserved consumers and to work with broadband providers to identify opportunities and reduce barriers to the deployment of service. The bill provides a nonrecurring appropriation of \$1.5 million for Fiscal Year 2021-2022 to DEO to develop, by June 30, 2022, geographic information system maps of broadband Internet service availability throughout this state.

The bill does not appear to have a fiscal impact on state government revenues. The bill will likely have a negative impact on local government revenues as a result of the discounted pole attachment rates.

The bill was approved by the Governor on May 7, 2021, ch. 2021-24, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.¹ Communities that lack broadband access can have difficulty attracting new capital investment. While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.² This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.³

The recent COVID-19 pandemic has enhanced the need for broadband Internet access in everyday life. Studies indicate that broadband Internet access matters for jobs, income, business relocation, civic engagement, and health.⁴ In addressing broadband Internet access issues, states have established broadband offices and created special funding programs to offer financial incentives for broadband in lower density areas.⁵ Additionally, as schools go online, data indicates that low income households disproportionately lack access to broadband Internet service, which puts their children at risk of falling behind.⁶

Federal Broadband Initiatives

In January 2020, the Federal Communications Commission (FCC) established the Rural Digital Opportunity Fund (Fund) to fund the deployment of broadband networks in rural America over the next decade. The program will consist of two phases. Using data from the FCC's previous mapping efforts, the first phase began in 2020 and made available up to \$16 billion to target census blocks that are wholly unserved with fixed broadband speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps).⁷ The winning bidders from the first round under Phase I were announced in December 2020, with entities that bid to provide service in Florida receiving over \$190 million over the next 10 years. The FCC is in the process of reviewing documents regarding the winning bids.⁸

¹ U.S. Federal Communications Commission, *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), <https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf> (last visited Feb. 11, 2021).

² U.S. Federal Communication Commission, *2021 Broadband Deployment Report* at 63 (Jan. 19, 2021), <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf> (last visited Feb. 12, 2021). For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.

³ American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf (last visited Feb. 12, 2021).

⁴ *COVID-19 lockdowns expose the digital have-nots in rural areas – here's which policies can get them connected* (Sep. 2, 2020), <https://theconversation.com/covid-19-lockdowns-expose-the-digital-have-nots-in-rural-areas-heres-which-policies-can-get-them-connected-144324> (last visited Feb. 12, 2021).

⁵ *Id.*

⁶ New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap*. (Aug. 6, 2020), <https://research.newamericaneconomy.org/report/internet-access-covid-19/> (last visited Feb. 12, 2021).

⁷ U.S. Federal Communications Commission, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0> (last visited Feb. 11, 2021).

⁸ U.S. Federal Communications Commission: <https://www.fcc.gov/document/auction-904-winning-bidders> (last visited Feb. 22, 2021).

The FCC is in the process of adopting more accurate broadband deployment data, including whether broadband Internet service is available to residential and/or business customers in a specific area.⁹ Using this more precise data, the second phase of FCC grants will make available at least \$4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.¹⁰

In addition, the U.S. Department of Agriculture (USDA), through its ReConnect Program, offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service.¹¹ Eligible entities include cooperatives and non-profits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants requesting a grant or a loan/grant combination under the ReConnect Program must submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous five years.¹²

Florida Broadband Program

In 2009, the Legislature authorized the 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; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

In 2020, the Legislature passed CS/HB 969,¹³ designating the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state. The bill created the Florida Office of Broadband (Office) within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.

CS/HB 969 (2020) maintained most of the requirements previously imposed on DMS and imposed them instead on the new office. Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in the state which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- 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;

⁹ U.S. Federal Communications Commission, Press Release, *FCC Takes Next Step to Ensure Collection of More Precise and Accurate Broadband Mapping Data* (Jan. 19, 2021), <https://docs.fcc.gov/public/attachments/DOC-369381A1.pdf> (last visited Feb. 15, 2021).

¹⁰ U.S. Federal Communications Commission, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0> (last visited Feb. 11, 2021).

¹¹ USDA, *Broadband*, <https://www.usda.gov/broadband> (last visited Feb. 11, 2021).

¹² *Id.*

¹³ Ch. 2020-26, L.O.F.

- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved¹⁴ areas of the state through grant programs; and
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida’s rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.¹⁵

For these purposes, CS/HB 969 (2020) authorized DEO to apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program.¹⁶

Regulation of Pole Attachments

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. Utility poles are divided into various “spaces” for specific uses, and different vertical portions of the pole serve different functions.¹⁷ Utility poles often accommodate equipment used to provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless, which benefits the public by minimizing “unnecessary and costly duplication of plant for all pole users.”¹⁸

The bottom of the pole generally is unusable for most types of attachments, although providers of wireless services and facilities sometimes attach equipment associated with distributed antenna systems and other small wireless facilities to the portion of the pole near the ground.¹⁹ Above that, the lower usable space on a pole (known as the “communications space”) houses low-voltage communications equipment, including fiber, coaxial cable, and copper wiring.²⁰ The topmost portion of the pole, the “electric space,” houses high-voltage electrical equipment.²¹ Historically, communications equipment attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space, including the electric space, to attach pole-top small wireless facilities. When a new attacher seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment.²²

Federal law provides that a state or local government may not prohibit the ability of any entity to provide telecommunications services.²³ Federal law also recognizes the authority of state and local governments to manage the public right-of-way (ROW) and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.²⁴

¹⁴ Section 364.0135(2)(d), F.S., defines the term “underserved” to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream.

¹⁵ S. 364.0135(4), F.S.

¹⁶ S. 364.0135(5), F.S.

¹⁷ See Florida Public Service Commission, What’s on a Utility Pole? <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited Mar. 17, 2021).

¹⁸ S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.

¹⁹ See EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach. *Pole Attachments: Safety and Reliability*; Crown Castle Wireline NPRM Comments at 5.

²⁰ PSC, *supra*, note 17.

²¹ PSC, *supra*, note 17.

²² FCC-CIRC1808-03 at 4-5.

²³ 47 U.S.C. § 253(a).

²⁴ 47 U.S.C. § 253(c) states that “Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

Congress began regulating pole attachments²⁵ in 1978.²⁶ The Telecommunications Act (Act) of 1996²⁷ expanded pole attachment rights to telecommunications²⁸ carriers. The Act requires utilities²⁹ to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the FCC³⁰ to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.³¹ The Act withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.³²

In April 2011, the FCC approved a pole attachment order which established a revised telecommunications formula and included make-ready³³ provisions which provided a benchmark for pole attachment rates and access.³⁴

In September 2018, the FCC issued an order³⁵ which preempted state and local laws and agreements, including those related to pole attachments, to remove regulatory barriers that would inhibit the deployment of “small cell” infrastructure necessary to support new wireless broadband services. The order set uniform rates and regulations for attachments on poles owned and controlled by publicly-owned electric utilities.³⁶ The order provided that state or local fees charged to mobile service providers for deploying small cell sites violate federal law unless they:

- Are a reasonable approximation of the state or local government’s costs;
- Only factor in costs that are “objectively reasonable;” and

²⁵ 47 U.S.C. § 224(a)(4), defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”

²⁶ The Pole Attachment Act of 1978 granted utility pole access to cable companies and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).

²⁷ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

²⁸ The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).

²⁹ 47 U.S.C. § 224(a)(1), defines “utility” as “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”

³⁰ The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States’ primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, <https://www.fcc.gov/about-fcc/what-we-do> (last visited Mar 13, 2021).

³¹ 47 U.S.C. § 224.

³² *In the Matter of Implementation of Section 224 of the Act A Nat’l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011).

³³ “Make-ready” generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional attachments. FCC, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999).

³⁴ FCC, *In the Matter of A National Broadband Plan for Our Future* (GN Docket No. 09-51) Implementation of Section 224 of the Act (WC Docket No. 07-245) Report And Order And Order On Reconsideration, FCC 11-50. (Apr. 7, 2011).

³⁵ FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Report and Order*, 33 FCC Rcd 9088 (14), FCC-18-133. *See also* CRS, *Overview of Legal Challenges to the FCC’s 5G Order on Small Cell Siting* (Feb. 25, 2019) The Order’s discussion of preemption begins by interpreting the Telecommunication Act’s two relevant preemption provisions: Sections 253 and 332(c)(7). Subject to certain exceptions, these sections preempt state and local requirements that “prohibit or have the effect of prohibiting the ability of any entity” to provide “telecommunications” or “personal wireless services.” The Order interprets these provisions as imposing a “material inhibition” standard, concluding that a law “ha[s] the effect of prohibiting” a telecommunications entity from providing service if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”

³⁶ American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations*, at 2, <https://www.publicpower.org/system/files/documents/January%202021%20-%20Federal%20Pole%20Attachment%20Regulations.pdf> (last visited Mar. 17, 2021).

- Are no higher than fees charged to similarly situated competitors.³⁷

Except for small cell wireless facilities, attachments of cable and telecommunications carrier facilities to utility poles owned by a municipal electric utility are not currently regulated at the state or federal level.

Effect of the Bill

The bill creates ch. 288, part XV, F.S., relating to the Florida Office of Broadband. The bill moves existing s. 364.0135, F.S., which governs the Office, into the new part as s. 288.9961, F.S., and creates two programs in the new part to support the expansion of broadband Internet service to consumers without access to service. The bill grants DEO rulemaking authority to implement the new part.

Broadband Opportunity Program

The bill creates s. 288.9962, F.S., to establish the Broadband Opportunity Program (grant program) within the Office. The grant program's purpose is to award grants, subject to appropriation, to applicants who seek to expand access to broadband Internet service³⁸ in unserved³⁹ areas of the state. The Office must administer and act as fiscal agent for the grant program and is responsible for receiving and reviewing applications and awarding grants.

Grants must fund the installation or deployment of infrastructure that supports broadband Internet service in unserved areas. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed⁴⁰ by at least one provider.

Applicants eligible for grant awards include:

- Corporations, limited liability companies, general partnerships, and limited partnerships.⁴¹
- Political subdivisions.
- Indian tribes.

The Office may not award, directly or indirectly, grants to a governmental entity or educational institution or affiliate to provide broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved area.

An eligible applicant may submit a grant application to the Office, which must include the following information:

- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed to be deployed;
- Evidence demonstrating the unserved nature of the project area;

³⁷ CRS, *supra*, note 35, at 2-3. The order also identifies specific fee limits that are presumptively allowed under federal law. For non-recurring fees, such as up-front applications for small cell site installations, localities may charge up to \$500, subject to certain exceptions. For recurring fees, such as access fees, localities may charge up to \$270 per year. Under certain circumstances, higher fees may be charged due to local cost variances.

³⁸ For purposes of newly created ss. 228.9961 and 288.9962, F.S., the bill defines the term "broadband Internet service" as any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

³⁹ For purposes of newly created ss. 228.9961 and 288.9962, F.S., the bill defines the term "unserved" as a geographic area of the state without access to broadband Internet service.

⁴⁰ The bill defines the term "deployed" to mean that a provider currently provides broadband Internet service in the specific geographic area or is able to provide broadband Internet service in a specific geographic area to a customer that requests service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period shall be extended to 60 days if permits are needed before the broadband Internet service is activated.

⁴¹ These entities must be organized under the laws of the state or otherwise authorized to transact business in the state.

- The number of households and businesses that would have access to broadband Internet service as a result of the grant;
- The total cost of the project and the timeframe in which it would be completed;
- A list identifying sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.

At least 30 days before the first day that grant applications may be submitted each fiscal year, the Office must publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank applications and award grants. The criteria and quantitative scoring system must include the criteria listed in the bill, as discussed below.

Within three business days after the close of the grant application process, the Office must publish on its website, from each application submitted, the proposed unserved areas to be served and the proposed broadband Internet speeds for the areas to be served.

A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the Office, within 45 days after publication of the information, a written challenge to an application. The challenge must contain information demonstrating that:

- The provider currently has deployed broadband Internet service to retail customers within the proposed project area;
- The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area; or
- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

Within three business days after the submission of a written challenge, the Office must notify the applicant, in writing, of the challenge. The Office must evaluate each challenge. If the Office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

If the Office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider ultimately does not fulfill its commitment to provide broadband Internet service in the unserved area, the Office may not consider another challenge from the provider for the next two grant cycles, unless the Office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

In evaluating grant applications and awarding grants, the Office must prioritize applications that:

- Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and healthcare facilities;
- Facilitate the use of telemedicine and electronic health records;
- Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
- Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;
- Include a component to actively promote the adoption of the newly available broadband Internet services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband Internet service to the greatest number of unserved households and businesses;
- Leverage greater amounts of funding for the project from private sources; or

- Demonstrate consistency with the Office's strategic plan.⁴²

The Office must endeavor to award grants to qualified applicants in all regions of the state. The Office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

A grant may not be used to serve any retail end user that already has access to broadband Internet service. A grant, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project. A single project may not be awarded a grant in excess of \$5 million.

For each grant awarded, the Office must enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

By January 1, 2023, and each year thereafter, the Office must publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

- A list of all grant applications received during the previous year and for each application:
 - The results of any quantitative weighting or scoring system the Office used to award grants or rank the applications.
 - The grant amount requested.
 - The grant amount awarded, if any.
 - A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which the grant was awarded and in securing adoption of such service in each project area.
- All written challenges filed during the previous year.

The bill defines terms, incorporates unserved areas in the list of project priorities, authorizes the Office to administer the grant program, and grants the Office rulemaking authority relating to the administration of the Office and the grant program.

Attachment of Broadband Facilities to Municipal Electric Utility Poles

The bill creates s. 288.9963, F.S., to provide terms for the attachment of broadband facilities to poles owned by municipal electric utilities.

The bill defines the following terms for purposes of this section:

- "Broadband provider" means a person or entity who provides fixed broadband Internet service.
- "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.
- "Underserved" means there is no retail access to the Internet at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.
- "Unserved" means that there is no retail access to the Internet at speeds of at least 10 megabits per seconds for downloading and 1 megabits per second for uploading.
- "Wireline attachment" means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

Promotional Rates

The bill provides that, beginning July 1, 2021, a broadband provider shall receive a promotional rate of \$1 per wireline attachment per pole per year for any new attachment necessary to make broadband

⁴² The Office has not yet issued a strategic plan.

service available to an unserved or underserved end user within a municipal electric utility service territory. This promotional rate applies through July 1, 2024.

A broadband provider who wishes to make wireline attachments subject to the promotional rate must submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved and underserved end users, along with information necessary to identify which unserved or underserved end users will gain access to broadband service as a result. A copy of the application and plan must also be submitted to the Office. The municipal electric utility must report to the Office which attachments on which utility poles were made available to broadband providers subject to the promotional rate, along with any information available to it regarding which of its utility customers do and do not have access to broadband service and whether they are unserved or underserved.

A broadband provider who applies for wireline attachments under the promotional rate must make all reasonable efforts to make broadband service available to the unserved or underserved municipal electric utility customers identified in the application. If a broadband provider fails to make broadband service available to those customers within 12 months, it may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers.

Except where provided otherwise in the bill, wireline attachments subject to the promotional rate must conform to all other terms and conditions of existing pole attachment agreements between the broadband provider and the municipal electric utility. If no agreement exists, the parties shall have 90 days to enter into a pole attachment agreement for all other terms and conditions of attachment.

General Terms

The bill provides that all wireline attachments must comply with certain safety and reliability standards. The bill defines these standards as all applicable engineering, reliability, and safety standards governing the installation, maintenance, and operation of facilities and poles and the performance of all work in and around electric utility facilities, including particular utility standards made available to a broadband provider, and shall include the most current versions of the National Electric Safety Code, the National Electric Code, and the regulations of the Occupational Safety and Health Administration, and other reasonable non-discriminatory safety and engineering requirements, including, but not limited to requirements addressing overloading of electric utility facilities.

However, wireline attachments and their replacements, which complied with safety and reliability standards when installed, are not required to be modified to comply with new requirements except as may be necessary for safety reasons, as reasonably determined by the municipal electric utility.

The bill also provides that if a municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require, as a condition to attachment, that the broadband provider reimburse all reasonable and nondiscriminatory costs attributable solely to the new attachment minus the salvage value of the removed pole, if positive. The municipal electric utility may not require a utility pole to be replaced to accommodate a broadband provider's attachment except where necessary to comply with applicable engineering and safety standards. With respect to these replacement poles, if the replacement is necessary to correct an existing violation, to bring the pole into compliance with any changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be charged to the broadband provider. For this purpose, the bill defines "useful life" to mean not less than 30 years for wood utility poles and 50 years for concrete, steel, ductile iron, and all other utility poles.

The bill prohibits a municipal electric utility from increasing the fees charged to broadband providers for pole attachments between July 1, 2021, and July 31, 2022.

Local Technology Planning Teams and Partnerships

The bill requires that the local technology planning teams established by the Office must work with rural communities to help those communities:

- Determine current broadband Internet service availability;
- Locate unserved and underserved consumers;
- Identify assets relevant to broadband deployment;
- Build partnerships with broadband providers; and
- Identify opportunities to leverage assets and reduce barriers to deployment of public and private broadband service in the community.

These teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

Mapping of Broadband Internet Service Availability

The bill provides a nonrecurring appropriation of \$1,500,000 for the 2021-2022 Fiscal Year to DEO to develop, by June 30, 2022, geographic information system maps of broadband Internet service availability throughout this state in a manner that is consistent with the FCC's new reporting standards and which allows for public input.

Strategic Plan

When developing the strategic plan, the bill requires DEO to incorporate applicable federal broadband activities, including any efforts or initiatives of the FCC, to improve broadband Internet service in this state. The plan must identify available federal funding sources for the expansion or improvement of broadband. The strategic plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022, and updated biennially thereafter.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides a \$1,500,000 appropriation to DEO for mapping. The grant program is subject to appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have a negative impact on local government revenues as a result of the discounted pole attachment charges.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Broadband Internet providers will benefit from significantly discounted rates for certain attachments made to municipal electric utility poles over the next three years and from the certainty that any non-discounted rates applicable to other attachments on these poles may not be increased for 13 months. These savings, together with the potential award of grants, should provide incentives for additional investment in broadband Internet infrastructure to reach unserved areas and unserved customers in this state. This may result in increased economic activity in areas that currently lack access to broadband Internet service.

D. FISCAL COMMENTS:

None.