

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1543 Broadband Infrastructure  
**SPONSOR(S):** Tomkow  
**TIED BILLS:** HB 1545 **IDEN./SIM. BILLS:** CS/SB 1800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Keating	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

In 2021, the Legislature took steps to improve broadband Internet access in unserved areas of the state. Among other things, the Legislature:

- Created the Broadband Opportunity Program to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (DEO). Subject to appropriation, the program would award grants to applicants, regardless of technology, who seek to expand access to broadband service in unserved areas of the state. This grant program has not yet received funding.
- Provided for a promotional rate of \$1 per wireline attachment per pole, per year for any new pole attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric utility service territory.
- Appropriated \$1.5 million to DEO to develop geographic information system maps of broadband service availability, including transmission speeds. These maps continue to be developed and updated.

The Office is currently developing a strategic plan for increasing the availability and use of broadband service in the state. Florida law requires this plan to be completed by June 30, 2022.

The bill creates the Broadband Pole Replacement Program, to be administered by the Office. The program will reimburse fixed, wireline broadband service providers for their costs incurred for the removal and replacement of existing utility poles in areas of Florida that are unserved by broadband Internet service. Reimbursements under the program are limited to 50 percent of the broadband Internet service provider's eligible pole replacement cost or \$5,000, whichever is less, in addition to their administrative costs related to the preparation and submission of the application for reimbursement.

The bill directs the Secretary of DEO to apply for \$100 million in federal funding from the Coronavirus Capital Projects Fund and directs any such funds received to be placed into the Broadband Pole Replacement Trust Fund, which is created by linked bill, HB 1545.

For the 2022-2023 fiscal year, the bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund to DEO for the purpose of administering the Broadband Opportunity Program created in 2021.

The bill takes effect upon becoming law, if HB 1545 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.<sup>1</sup> 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.<sup>2</sup> This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

##### Federal Broadband Initiatives

###### *FCC Rural Digital Opportunity Fund*

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).<sup>7</sup> 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.<sup>8</sup>

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.<sup>9</sup> Using this more precise data, the second phase of FCC grants will make

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<sup>1</sup> U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), available at <https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf> (last visited Feb. 1, 2022).

<sup>2</sup> FCC, *2021 Broadband Deployment Report* at 63 (Jan. 19, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf> (last visited Feb. 1, 2022). For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.

<sup>3</sup> American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), available at [https://www.ntia.doc.gov/files/ntia/publications/american\\_broadband\\_initiative\\_milestones\\_report.pdf](https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf) (last visited Feb. 1, 2022).

<sup>4</sup> *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. 1, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> 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. 1, 2022).

<sup>7</sup> FCC, *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. 1, 2022).

<sup>8</sup> FCC, *Auction 904 Winning Bidders*, <https://www.fcc.gov/document/auction-904-winning-bidders> (last visited Feb. 1, 2022).

<sup>9</sup> See, FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 7 at 3. In August 2019, the FCC adopted the Digital Opportunity Data Collection Program, which modernized the collection of broadband deployment data by creating granular coverage maps, as opposed to census tract maps, and by implementing a process to accept public data to confirm the maps' accuracy.

available at least \$4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.<sup>10</sup> Grants from both phases of the Fund are provided directly to service providers.

### *Department of Commerce Coronavirus Capital Projects Fund*

The 2021 American Rescue Plan<sup>11</sup> allocated \$10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.<sup>12</sup> Each state is eligible for a fixed amount of \$100 million plus an additional allocation based on the state's population, the proportion of its population that lives in rural areas, and the proportion of individuals who receive a household income below 150 percent of the poverty line.<sup>13</sup>

Eligible states must have applied by December 27, 2021, and submit a grant plan by September 24, 2022.<sup>14</sup> Capital Projects Fund recipients may pass the funds on to subrecipients, such as other levels of government, non-profits, or private entities. Florida's allocation of these funds is \$366 million,<sup>15</sup> for which Florida's Department of Economic Opportunity (DEO) timely applied.

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream.<sup>16</sup> Projects that may be eligible on a case-by-case review include investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.<sup>17</sup>

### *USDA Programs*

The U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks.<sup>18</sup> The ReConnect Program offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service. Eligible entities include cooperatives and nonprofits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants for 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 5 years.<sup>19</sup>

### *Additional Federal Broadband Funding and Initiatives*

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In March 2020, Congress ratified the FCC's Data Collection Program with passage of the Broadband Data Act, which requires the FCC to establish a semiannual collection of geographically granular broadband coverage data to use to create coverage maps. Congress allocated \$65 million to the FCC to achieve this mapping project in December 2020.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Pub. L. 117-2 (117<sup>th</sup> Congress) (H.R. 1319).

<sup>12</sup> U.S. Dep't. of Treasury, *Capital Projects Fund*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> (last visited Feb. 1, 2022).

<sup>13</sup> U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations Methodology for States, Territories, and Freely Associated States* (Aug. 2021), <https://home.treasury.gov/system/files/136/Allocations-Methodology-States-Territories-Freely-Associated-States.pdf> (last visited Feb. 1, 2022).

<sup>14</sup> *Id.* See also, U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, 1, 14 (Sept. 2021), <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf> (last visited Feb. 1, 2022).

<sup>15</sup> U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations for States, District of Columbia, and Puerto Rico*, <https://home.treasury.gov/system/files/136/Allocations-States.pdf> (last visited Feb. 1, 2022).

<sup>16</sup> U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, *supra* note 14 at 3.

<sup>17</sup> *Id.* at 7.

<sup>18</sup> USDA, *Telecom Programs*, available at <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs> (last visited Feb. 1, 2022).

<sup>19</sup> See USDA, *ReConnect Loan and Grant Program*, available at <https://www.usda.gov/reconnect#anchor1> (last visited Feb. 1, 2022).

Multiple federal assets have been made available to assist with the expansion of broadband, for example:<sup>20</sup>

- The U.S. Department of Housing and Urban Development<sup>21</sup> offers block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;<sup>22</sup> and
- The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.<sup>23</sup>

The Consolidated Appropriations Act passed by Congress in December 2020<sup>24</sup> included the following funding to expand broadband Internet access for students, families, and unemployed workers:<sup>25</sup>

- \$300 million for areas lacking broadband, especially rural areas;<sup>26</sup>
- \$250 million for the FCC's telehealth program;<sup>27</sup>
- \$285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;<sup>28</sup> and
- \$1 billion in grants for tribal broadband programs.<sup>29</sup>

The American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, including \$10 billion for the Coronavirus Capital Projects Fund (discussed above) to provide grants to states for the costs of capital projects, like broadband infrastructure, and \$130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.<sup>30</sup>

Additionally, the Infrastructure Investment and Jobs Act,<sup>31</sup> signed into law on November 15, 2021, contains \$64 billion in funding for broadband expansion and access. The law:<sup>32</sup>

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<sup>20</sup> See generally, National Telecommunications and Information Administration (NTIA), American Broadband Initiative, *Progress Report* (June 2020), available at [https://www.ntia.doc.gov/files/ntia/publications/abi\\_progress\\_report\\_june2020.pdf](https://www.ntia.doc.gov/files/ntia/publications/abi_progress_report_june2020.pdf) (last Jan. 21, 2022).

<sup>21</sup> U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), available at <https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf> (last visited Feb. 1, 2022).

<sup>22</sup> U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, available at <https://www.doi.gov/broadband> (last visited Feb. 1, 2022).

<sup>23</sup> Broadband USA, *State Broadband Leaders Network* (Dec. 19, 2018), available at <https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln> (last visited Feb. 1, 2022).

<sup>24</sup> Consolidated Appropriations Act of 2020, H.R. 1865, 116<sup>th</sup> Cong. (2020).

<sup>25</sup> NCSL, *COVID-19 Economic Relief Bill: Broadband*, (Jan. 4, 2021) <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx#:~:text=Erlinda%20Doherty-Overview,agency%20operations%20through%20September%202021>. (last visited Feb. 1, 2022).

<sup>26</sup> See generally, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, available at <https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021> (last visited Feb. 1, 2022). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at 25/3Mbps or higher.

<sup>27</sup> FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), available at <https://www.fcc.gov/covid-19-telehealth-program> (last visited Feb. 1, 2022).

<sup>28</sup> See generally, NTIA, *Minority Broadband Initiative*, available at <https://www.ntia.doc.gov/category/minority-broadband-initiative> (last visited Feb. 1, 2022).

<sup>29</sup> See generally, NTIA, *NTIA Announces Tribal Consultations on New Program to Increase Broadband Access Across Indian Country* (Feb. 5, 2021), available at <https://www.ntia.gov/blog/2021/ntia-announces-tribal-consultations-new-program-increase-broadband-access-across-indian> (last visited Feb. 1, 2022).

<sup>30</sup> Pub. L. No. 112-2, ss. 603 and 604 (117<sup>th</sup> Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, <https://home.treasury.gov/news/press-releases/jy0069> (last visited Feb. 1, 2022).

<sup>31</sup> Pub. L. No. 117-58 (117<sup>th</sup> Congress) (H.R. 3684). See also, Congressional Research Service, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F* (Nov. 16, 2021), <https://crsreports.congress.gov/product/pdf/R/R46967> (last visited Feb. 1, 2022).

<sup>32</sup> NTIA, *Infrastructure Investment and Jobs Act Overview*, <https://www.ntia.doc.gov/category/grants> (last visited Feb. 1, 2022).

- Establishes the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants;
- Allocates \$2.75 billion to the Digital Equity Act Competitive Grant Programs administered by the Department of Commerce;
- Invests \$2 billion in the Tribal Broadband Connectivity Program; and
- Funds the Middle Mile Grants program, administered by the NTIA, with \$1 billion, especially to support construction, improvement, or acquisition of broadband infrastructure.

## Florida Broadband Initiatives

### *Florida's Office of Broadband*

In 2020, the Legislature designated the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state.<sup>33</sup> The Florida Office of Broadband (Office) was created within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.<sup>34</sup>

The Office must:<sup>35</sup>

- Create a strategic plan<sup>36</sup> for increasing the availability and use of broadband Internet service in the state, which must identify federal funding sources for the expansion of broadband and 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 to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved<sup>37</sup> 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; and
- Administer Florida's Broadband Opportunity Program.<sup>38</sup>

DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program to further the above goals.<sup>39</sup>

In 2021, the Legislature appropriated \$1.5 million to DEO to develop geographic information system maps of broadband Internet service availability, including transmission speeds, consistent with the FCC's data collection program standards.<sup>40</sup> DEO must collaborate with broadband service providers, state agencies, local government entities, private businesses, educational institutions, and community organizations to develop these maps.<sup>41</sup> Through its website, DEO allows for public input concerning the speed, connectivity, and access to broadband Internet service in areas throughout the state to help

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<sup>33</sup> Ch. 2002-26, Laws of Fla.

<sup>34</sup> *Id.*

<sup>35</sup> S. 288.9961(4), F.S.

<sup>36</sup> 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. S. 288.9961(4)(a), F.S.

<sup>37</sup> Section 288.9961(2)(f), 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.

<sup>38</sup> The Broadband Opportunity Program is established in s. 288.9962, F.S., to award grants to those who seek to expand broadband Internet service to unserved areas of Florida.

<sup>39</sup> S. 288.9961(5), F.S.

<sup>40</sup> Ch. 2021-24, Laws of Fla.

<sup>41</sup> *Id.*

identify unserved and underserved areas. DEO's mapping efforts are not complete and will continue to be updated as more data is added.<sup>42</sup>

### *Broadband Opportunity Program*

In 2021, the Legislature created the Broadband Opportunity Program<sup>43</sup> (grant program) to award grants to applicants who seek to expand access to broadband Internet service<sup>44</sup> in unserved<sup>45</sup> areas of the state, regardless of the technology to be used. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider. Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.

In evaluation 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.<sup>46</sup>

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, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project, and a single project may not be awarded a grant in excess of \$5 million.

The Office has not yet received funding for the grant program.

### *Promotional Pole Attachment Rates*

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.<sup>47</sup> 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."<sup>48</sup>

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<sup>42</sup> DEO, *Office of Broadband*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited Feb. 1, 2022).

<sup>43</sup> Section 288.9962, F.S.

<sup>44</sup> Section 288.9961(2)(a), F.S., defines the term "broadband Internet service" to mean 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.

<sup>45</sup> Section 288.9961(2)(g), F.S., defines the term "unserved" to mean a geographic area of the state without access to broadband Internet service.

<sup>46</sup> The Office is in the process of developing a strategic plan for submission by June 30, 2022, as required by section 288.9961(4)(a), F.S.

<sup>47</sup> See Florida Public Service Commission, *What's on a Utility Pole?* <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited Feb. 1, 2022).

<sup>48</sup> S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.

When a new attacher, such as a broadband Internet service provider, 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.<sup>49</sup>

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

In 2021, the Legislature provided for a promotional rate of \$1 per wireline attachment per pole, per year for any new attachment necessary to make broadband Internet service available to an unserved or underserved end user within a municipal electric utility service territory. This rate began July 1, 2021, and ends July 1, 2024.<sup>50</sup>

Under this promotional program, 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 the broadband provider to reimburse all reasonable costs attributable to the new attachment, minus the salvage value of the pole. A utility cannot require pole replacement to accommodate the broadband provider's pole attachment unless it is necessary to comply with applicable engineering and safety standards. Additionally, if the pole replacement is necessary to correct an existing violation, to bring the pole into compliance with changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be passed on to the broadband provider.<sup>51</sup>

## **Effect of Proposed Changes**

### Broadband Pole Replacement Program

The bill creates the Broadband Pole Replacement Program within the Office. The Office will accept applications for the reimbursement of eligible pole replacement costs, and distribute payments from the Broadband Pole Replacement Trust Fund (trust fund) until the funds are exhausted.

#### *Eligibility*

Private businesses or nonprofit corporations that currently provide, or will provide, qualifying broadband service to Florida are eligible for reimbursements under the Program. These entities must provide, or commit to providing broadband Internet service that can deliver Internet access at speeds of at least 100 Mbps downstream and 100 Mbps upstream with a latency at a level sufficient to allow real-time, interactive applications. Additionally, the applicants' pole replacements must occur in unserved areas<sup>52</sup> for the purpose of attaching facilities to provide qualifying broadband service to residences or businesses in that area.

#### *Reimbursements*

The Office must reimburse an applicant within 60 days after it receives its completed application. The Office will reimburse according to availability of funds in the trust fund. Any application that is pending when the trust fund is exhausted is denied, but the applicant may reapply if funds are later added to the trust fund.

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<sup>49</sup> FCC-CIRC1808-03 at 4-5.

<sup>50</sup> S. 288.9963, F.S.

<sup>51</sup> *Id.*

<sup>52</sup> The bill defines an "unserved area" as a location in which: (1) fixed, terrestrial, or retail wireline broadband Internet service is unavailable at the time that the broadband service provider requests to attach its facilities to a pole in that location, and no other person has committed to providing qualifying broadband service; or (2) the applicant is committed under the terms of a state or federal grant to provide qualifying broadband service, provided that the availability of the grant is limited to areas that lack access to fixed, terrestrial, or retail wireline broadband Internet service.

An application for reimbursement must include the following:

- Information sufficient to establish the number and cost of eligible pole replacements;
- Documentation sufficient to establish that the eligible pole replacements are completed;
- The total reimbursement amount requested, and any state or federal grant funding or accounting information required to justify the amount requested;
- A notarized statement from an officer or agent of the applicant which certifies that the application's contents are true and accurate, and that the applicant will comply with applicable law as a condition of receiving reimbursement under the Program; and
- Receipts to verify the amount of eligible pole replacement costs paid by the applicant.

An eligible pole replacement cost is the actual cost paid by the applicant to perform a pole replacement, excluding any amount that is otherwise reimbursed through another state or federal broadband grant program or other governmental entity. Specifically, the cost includes:

- The removal and disposal of the existing utility pole;
- The purchase and installation of a replacement utility pole; and
- The transfer of any existing facilities to the replacement utility pole.

An eligible applicant shall receive a reimbursement of up to 50 percent of the total amount it paid for each eligible pole replacement, or \$5,000, whichever is less, and up to 100 percent of its actual and reasonable administrative expenses paid to prepare and submit the application. Reimbursement of administrative expenses may be provided in an amount up to 5 percent of the eligible pole replacement costs that the applicant requests in its application.

If the applicant cannot provide the information required by the application, it may request that the pole owner that performed the pole replacement submit the required information, including the pole replacement costs paid by the applicant. A pole owner that submits this information on behalf of a broadband Internet service provider may require reimbursement of its administrative expenses from the applicant.

As a condition of receiving reimbursement, the applicant must certify its compliance with the terms of reimbursement program and agree to refund with interest any reimbursements or portions thereof if the Office finds that the applicant materially violated any requirement of the program.

#### *Administrative Duties*

The bill directs the Secretary of DEO to apply for \$100 million in federal funding for the reimbursement program, including funds available under the Coronavirus Capital Projects Fund. If Florida receives any such funds, they must be deposited into the trust fund created by linked bill, HB 1545. If Florida receives federal funds from the Coronavirus Capital Projects Fund, state funds allocated to the reimbursement program must be reduced by an equal amount. The bill does not allocate state funds to the program.

The Office must publish and update the following information on its website within 60 days after the trust fund receives its first deposit of funds:

- Statistics on the number of applications received, processed, and rejected by the reimbursement program;
- Statistics on the value, number, and status of reimbursements provided under the program, including the names of pole owners and retail providers of qualifying broadband service which received reimbursements under the program; and
- The amount of funds remaining in the trust fund.

The Office must further provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives within one year after the trust fund is exhausted of its funds. This report must identify and examine the deployment of broadband infrastructure and technology facilitated by reimbursements from the program.



The bill expressly prohibits rulemaking by DEO, the Office, or any other agency, to administer the reimbursement program.

The Office of the Auditor General must perform an audit of the trust fund and its administration for compliance with pertinent law within one year after funds are deposited into the trust fund.

#### Broadband Opportunity Program Funding

For the 2022-2023 fiscal year, the bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund, from payments received by the state pursuant to the Federal Coronavirus State Fiscal Recovery Fund, to the Office for the purpose of administering the Broadband Opportunity Program established in s. 288.9962, F.S.

#### Effective Date

The bill takes effect upon becoming law, if HB 1545 or similar legislation is adopted in the same legislative session or an extension thereof and also becomes law.

#### B. SECTION DIRECTORY:

**Section 1** Amends s. 288.9961, F.S., relating to promotion of broadband adoption and the Florida Office of Broadband.

**Section 2** Creates s. 288.9964, F.S., establishing the Broadband Pole Replacement Program.

**Section 3** Provides an appropriation.

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

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund, from payments received by the state pursuant to the federal Coronavirus State Fiscal Recovery Fund, to the Office to administer the grant program created by the Legislature in 2021. The bill does not appropriate funds to the reimbursement program created by the bill. It is unclear whether the Department will require additional funds or FTE's to administer the program. However, linked bill HB 1545 allows funds deposited into the Broadband Pole Replacement Trust Fund to be used to administer the program.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

The reimbursement program created by the bill, if funded, will lower the costs of fixed, terrestrial, retail wireline broadband service providers, i.e., companies that provide broadband via coaxial cable, fiber, or other wireline technology, to extend broadband service to unserved areas in the state. This may encourage the extension of service to such areas, providing greater access to broadband service in those areas.

The grant program created by the Legislature in 2021 and funded by the bill will lower the costs for broadband service providers, regardless of technology, to extend broadband service to unserved areas in the state. This may encourage the extension of service to such areas, providing greater access to broadband service in those areas.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expressly prohibits rulemaking by DEO, the Office, or any other agency to administer the reimbursement program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that an applicant shall receive a reimbursement of up to 50 percent of the total amount it paid for eligible pole replacement costs, or \$5,000, whichever is less. It is not clear whether the \$5,000 cap is intended to apply on a per pole or per application basis.

DEO will be limited in its administration of the reimbursement program, as it is not granted rulemaking authority to administer the program. This may result in a less agile or responsive program that may require further legislative action to address any implementation issues that arise.

The Office's strategic plan for increasing the availability and use of broadband Internet service in the state is due to be completed by June 30, 2022. Funds from the reimbursement program will be distributed on a first-come, first-serve basis, and may be distributed without regard for a project's consistency with the state's strategic plan.

The allowance for reimbursement program applicants or pole owners to recover administrative expenses (up to 5% of eligible pole replacement costs) may conflict with guidance from the U.S. Department of the Treasury concerning eligible costs under the Coronavirus Capital Projects Fund. That guidance defines eligible program administrative costs as the costs to the recipient (i.e., the state) to administer the funds, to provide technical assistance to subrecipients (e.g., broadband service providers), and complying with grant administration and audit requirements.<sup>53</sup>

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<sup>53</sup> U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, *supra* note 14 at 10.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.