**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

| | |
|---|---|
| BILL: | PCS/CS/SB 1800 (711618) |
| INTRODUCER: | Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senators Boyd and Bradley |
| SUBJECT: | Broadband Infrastructure |
| DATE: | February 25, 2022 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Harmsen | McKay | CM | **Fav/CS** |
| 2. | Hrdlicka | Hrdlicka | ATD | **Recommend: Fav/CS** |
| 3. | Hrdlicka | Sadberry | AP | **Pre-meeting** |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

PCS/CS/SB 1800 creates the Broadband Pole Replacement Program, to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (department). The program will reimburse eligible broadband Internet 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 the provider's administrative costs related to the preparation and submission of the application for reimbursement.

The bill also requires the office to report annually on its activities and on the administration of the Broadband Pole Replacement Program and the Broadband Opportunity Program.

The bill does not appropriate any funding to the program or resources to the department to administer the program. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

## II. Present Situation:

### Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which required many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[3] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[4]

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.[5] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[6] One key factor in deploying broadband infrastructure is access to utility poles, upon which broadband providers affix their infrastructure.[7] Often, broadband providers who seek to expand their infrastructure are met with denied or delayed utility pole access, or are asked to pay an excessive fee for the attachment or to replace the entire pole.[8]

---

[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Feb. 14, 2022).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Feb. 14, 2022).
[3] Congressional Research Service (CRS), *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Feb. 14, 2022).
[4] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Feb. 14, 2022).
[5] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Feb. 14, 2022). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[6] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report (last visited Feb. 14, 2022). *See also* CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7.
[7] Kristian Stout, Ben Sperry, International Center for Law and Economics, *Issue Brief: Pole Attachments and Broadband Build-out: The Case for Reform*, at 3 (Jul. 2021), https://laweconcenter.org/wp-content/uploads/2021/07/Pole-Attachment-Issue-Brief.pdf (last visited Feb. 14, 2022) (*citing* Petition of NCTA for Expedited Declaratory Ruling, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Jul. 16, 2020), at 5-9, https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf.)
[8] R Street, *Pole Replacement Explainer*, (Apr. 2021) https://www.rstreet.org/wp-content/uploads/2021/04/explainer23.pdf (last visited Feb. 14, 2022). *See also*, Edward Lopez and Patricia Kravtin, Connect the Future, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, at 3, https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf (last visited Feb. 14, 2022).

Communities that lack broadband access can have difficulty attracting new capital investment.[9] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[10]

**Federal Broadband Initiatives**

There are several existing and new programs at the federal level dedicated to expanding the availability and access to broadband Internet. For example, 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;[11] the U.S. Department of Housing and Urban Development offers block grants that can support broadband infrastructure;[12] and the Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development.[13]

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States through its Digital Opportunity Data Collection Program.[14] The FCC collects information from service providers according to specific reporting standards to create geographic service maps. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[15] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[16] The FCC is in the process of updating its broadband maps with more detailed and precise information.[17] 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.[18]

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America. The first phase of the fund began in 2020 and made $16 billion available to target census blocks that are wholly unserved by fixed broadband speeds of at

[9] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 8.
[10] 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. 14, 2022).
[11] USDA, *Telecom Programs*, https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Feb. 14, 2022).
[12] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs*, (Jan. 7, 2016) https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Feb. 14, 2022).
[13] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, https://www.doi.gov/broadband (last visited Feb. 14, 2022).
[14] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Feb. 14, 2022).
[15] FCC, *Establishing the Digital Opportunity Data Collection*, at 5, 8-16.
[16] FCC, *Broadband Data Collection Consumer Information*, https://www.fcc.gov/BroadbandData/consumers (last visited Feb. 14, 2022).
[17] FCC, *Broadband Data Collection*, (Dec. 15, 2021) https://www.fcc.gov/BroadbandData (last visited Feb. 14, 2022).
[18] Broadband USA, *State Broadband Leaders Network*, (Dec. 19, 2018) https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Feb. 14, 2022).

least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[19] Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[20] Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program. 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.[21]

Further, billions in Congressional appropriations have been made over the last year, including funding in the December 2020 COVID-19 relief bill for rural broadband ($300 million) through the NTIA Broadband Infrastructure Development Grants program;[22] the American Rescue Plan Act that included multiple appropriations that could be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects and $130.2 billion for Community Development Block Grants that can be used for community development projects;[23] and at least $64 billion in the Infrastructure Investment and Jobs Act, signed into law on November 15, 2021, for programs such as the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants.[24]

**U.S. Department of the Treasury Coronavirus Capital Projects Fund**

The American Rescue Plan Act allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[25] Florida's share is $366 million, and the state submitted its intent to use the funds in December 2021 to expand broadband Internet infrastructure in Florida, among other capital uses.[26]

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; projects for digital connectivity that facilitate broadband access; and

---

[19] FCC, *Auction 904: Rural Digital Opportunity Fund: Fact Sheet*, https://www.fcc.gov/auction/904/factsheet. FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, (Feb. 7, 2020) https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (both last visited Feb. 14, 2022).

[20] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, https://www.fcc.gov/document/auction-904-winning-bidders (last visited Feb. 14, 2022).

[21] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, at 3 and 4.

[22] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021). *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Feb. 14, 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.

[23] Pub. L. No. 112-2, ss. 603 and 604 (117th 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. 14, 2022).

[24] Pub. L. No. 117-58 (117th 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. 14, 2022).

[25] 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. 14, 2022).

[26] *See* Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development, Committee Meeting of January 12, 2022, meeting packet and video at https://www.flsenate.gov/Committees/Show/ATD/ (last visited Feb. 17, 2022).

construction or improvement of certain community facilities.[27] Projects may also be eligible on a case-by-case review, such as investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[28] Each capital project must:

- Invest in capital assets designed to directly enable work, education, and health monitoring;
- Be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
- Be designed to address a critical need of the community to be served by it.

The deadline to submit a grant plan to the U.S. Department of the Treasury is September 24, 2022.

**NTIA Broadband Programs**

The Infrastructure Investment and Jobs Act includes $65 billion for broadband infrastructure and access. Through this funding, the NTIA will implement multiple programs, including the Broadband Equity, Access, and Deployment (BEAD) program and Enabling Middle Mile Broadband Infrastructure program.[29]

The BEAD program, $42.45 billion in total, is for states to use for broadband deployment, mapping, and adoption projects. Each state will receive an initial allocation of $100 million to support planning efforts and the creation of a 5-year action plan for use of the funds. The remaining funding will be distributed on a formula that considers the number of unserved and high-cost locations in the state; the first priority for funding is for providing broadband to unserved areas (those below 25/3 Mbps), followed by underserved areas (those below 100/20 Mbps), and then serving community anchor institutions (1/1 Gbps).

The Enabling Middle Mile Broadband Infrastructure program, $1 billion in total, is for the construction, improvement, or acquisition of middle mile infrastructure. The goal is to reduce the cost of connecting unserved and underserved areas to the internet backbone. States as well as local governments, technology companies, utilities, telecommunications companies, and others may apply for these funds.

Currently there is no guidance or allocation information publically available for these programs.

**Florida's Office of Broadband**

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity.[30] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.[31]

---

[27] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, at 3, https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 17, 2022).
[28] *Id*. at 7.
[29] U.S. Dep't. of Commerce, NTIA, *Grants*, https://www.ntia.doc.gov/category/grants (last visited Feb. 17, 2022).
[30] Chapter 2020-26, Laws of Fla.
[31] Section 288.9961(4), F.S. *See also*, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband (last visited Feb. 14, 2022).

Specifically, the Office must:[32]

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also 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 in order 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 areas of the state through grant programs;[33]
- 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.

The department may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the department has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.[34]

***Broadband Opportunity Program[35]***

The Office administers the Broadband Opportunity grant program to expand broadband Internet service to unserved areas of Florida. 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.

No funds have been appropriated for the program, and no grants have been made available.

[32] Section 288.9961(4), F.S.
[33] 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 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term "unserved" as a geographic area in which there is no broadband Internet service provider.
[34] Section 288.9961(5), F.S.
[35] Section 288.9962, F.S.

**Regulation of Pole Attachments**

Utility poles may be installed and owned by different kinds of utilities,[36] such as electrical or telecommunications providers.[37] "Pole attachment" is the process by which communications companies allocate infrastructure on utility poles. Different vertical portions of utility poles are divided for specific uses, including electrical power, telephone, cable television, broadband Internet, and wireless service.[38] The owning entity can charge others to attach their services to its pole. This sharing of the pole resource benefits the public by minimizing "unnecessary and costly duplication of plant for all pole users."[39] When a new attacher seeks access to a pole, it is necessary to evaluate the safety and ability to add the attachment. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, a larger pole is necessary to accommodate a new attachment.[40]

Federal law recognizes state and local government authority to manage the public right-of-way (ROW) on utility poles and to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for the use of such ROW.[41]

Congress began regulating pole attachments in 1978.[42] The Telecommunications Act (Act) of 1996[43] added provisions making access to utility poles mandatory for telecommunications services providers,[44] and providing for nondiscriminatory access, unless there is insufficient capacity and reasons of safety, reliability and generally applicable engineering purposes.[45] Municipalities and rural electric cooperative utilities are exempt from the federal provisions.[46]

A state, however, can assume regulation of pole attachment through a process known as "reverse preemption." This requires a state to expressly assert jurisdiction through state legislation, followed by certification to the FCC that "in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility

[36] 47 U.S.C. 224(a)(1) (1996), 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."
[37] *See*, Jim Saunders, NEWS SERVICE OF FLORIDA, *FPL, AT&T Battle Over Utility Bills*, (Aug. 1, 2019) https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/ (last visited Feb. 14, 2022).
[38] Florida Public Service Commission, *What's on a Utility Pole?*, http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole (last visited Feb. 14, 2022). 47 U.S.C. 224(a)(4), defines "pole attachment" as "any attachment by a cable television system or provider or telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[39] S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.
[40] FCC, *Third Report and Order and Declaratory Ruling In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC 1808-03 (2018) at 4-5.
[41] 47 U.S.C. 253(c).
[42] 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. 950234 (Feb. 21, 1978).
[43] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
[44] 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).
[45] Pub. L. No. 104-104, *codified* at 47 U.S.C. 224(f).
[46] 47 U.S.C. 224(a)(1).

services."[47] As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.[48] In 2021, this regulatory authority was transferred to the Florida Public Service Commission;[49] the PSC is still in the process of adopting rules to complete this transfer.[50]

In September 2018, the FCC issued an order 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.[51] 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
- Are no higher than fees charged to similarly situated competitors.[52]

***Florida Promotional Rates for Wireline Attachment***

The Legislature has provided for the promotional rate of $1 per wireline attachment per pole, per year for any new attachment necessary to make broadband 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.[53]

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.[54]

---

[47] 47 U.S.C. 224(c)(2).
[48] FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, (Mar. 19, 2020) https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2 (last visited Feb. 14, 2022).
[49] Chapter 2021-191, Laws of Fla.
[50] Cindy Miller, *What's Up with Pole Attachments in Florida: Energy and Telecom Players Urge Different Approaches*, (Sep. 17, 2021) https://energycentral.com/c/um/whats-pole-attachments-florida-energy-and-telecom-players-urge-different (last visited Feb. 14, 2022).
[51] 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: ss. 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."
[52] CRS, *Overview of Legal Challenges to the FCC's 5G Order on Small Cell Siting*, 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. Higher fees may be charged due to local cost variances.
[53] Section 288.9963(3), F.S.
[54] "Useful life" of a utility pole means not less than 30 years for wood utility poles, and not less than 50 years for concrete, steel, ductile iron, and all other utility poles. Section 288.9963(5), F.S.

## III. Effect of Proposed Changes:

**Broadband Pole Replacement Program (creating s. 288.9964, F.S.)**
The bill creates the Broadband Pole Replacement Program within the Office of Broadband. The Office will accept applications for the reimbursement of eligible pole replacement costs and distribute payments until the funds are exhausted. Eligible pole replacement is the removal of an existing utility pole and its replacement with a new utility pole in order to accommodate the attachment to the new utility pole of facilities used by the provider.[55]

***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 qualifying broadband service that is capable of delivering 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 for the purpose of attaching facilities to provide qualifying broadband service to residences or businesses in that area.[56]

***Reimbursements***

The Office must reimburse an applicant within 60 days after it receives its completed application. Reimbursements are made on a first-come, first-served basis. The Office will reimburse under the program according to availability of funds. Any application that is pending when appropriated funding is exhausted is denied, but the applicant may reapply if funds are later made available. The Office is required to provide updated information on its website regarding the availability of funds and the date when applications may begin to be accepted.

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;
- Receipts to verify the amount of eligible pole replacement costs paid by the applicant; and
- Any other information or documentation required by the office to comply with the requirements or conditions, as applicable, of any federal funding used to pay reimbursements under the program.

[55] It does not include removal and replacement of an existing utility pole by the pole owner or an affiliate, unless the removal is performed as a accommodation to a provider of qualifying broadband service.
[56] The bill defines an "unserved area" as a location in which (1) fixed, terrestrial, 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, retail wireline broadband Internet service.

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 may include:

- 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 for each eligible utility pole replacement up to 50 percent of the total amount paid for eligible pole replacement costs, or $5,000, whichever is less. Reimbursements from appropriated federal funds must also be made in compliance with any federal requirements or conditions for use of the funds.

If the applicant broadband Internet service provider 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.

Additionally, an applicant that is a pole owner that calculates a pole rental and other fees based on a federal or state-approved formula that includes consideration of the pole owner's expenses, must exclude any expenses reimbursed by this program, paid for by a retail provider of qualifying broadband service, or funded by another state or federal grant.

As a condition of receiving reimbursement, the applicant must certify its compliance with the program, including any federal requirements, 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 Office must publish and update the following information on its website:

- Statistics on the number of applications received, processed, and denied by the 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 from any appropriation.

The bill specifically authorizes the department to adopt rules to establish the application and the conditions or requirements that must be met in order to use and receive any federal funding appropriated to the program.

**Reporting by the Office of Broadband**

The bill requires the Office to report annually, by January 31, on the activities of the office to meet the requirements of s. 288.9961, F.S., including on any applications made and use of federal funds for broadband infrastructure, deployment, or access. If funds are appropriated to the Broadband Opportunity Program or the Broadband Pole Replacement Program, then the office must report on the programs as well.

**Effective Date**

The bill takes effect on July 1, 2022.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure. The bill will benefit eligible providers by assisting them to expand their services.

C. Government Sector Impact:

The bill does not appropriate any funds to the Broadband Pole Replacement Program.

It is unclear whether the department will require additional funds or positions to administer the program. SB 2500 provides an additional FTE to the department for the Office of Broadband.

For the bill as originally filed, the Department of Economic Opportunity provided a high estimate for resources necessary to implement the bill, including:

- $880,219 ($35,587 nonrecurring) and 10 FTE;

- $1 million for staff augmentation (8-12 full time and 3-5 part-time staff); and
- $2 million ($1.5 million nonrecurring) for IT software licenses to track projects and awards.

With the changes to the bill, it is likely that this level of resources will not be needed; however any exact impact is unknown at this time. The department may also incur costs for reporting and posting information on its website, which can be done within existing resources.[57]

## VI. Technical Deficiencies:

Lines 177-179 should be removed from the bill, as the related provisions were removed from the bill (related to reimbursement of certain administrative expenses).

## VII. Related Issues:

The Department of Economic Opportunity, in its agency analysis of the bill, states that the U.S. Treasury had advised the department "against the use of Capital Projects Fund for utility pole replacement or general construction projects."[58]

SB 1802 is a linked bill that creates the Broadband Pole Replacement Trust Fund.

## VIII. Statutes Affected:

This bill substantially amends section 288.9961 of the Florida Statutes.

This bill creates section 288.9964 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**PCS (711618) by Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development):**
The committee substitute:

- Requires the Office of Broadband to report annually on its activities, including on the Broadband Pole Replacement Program and the Broadband Opportunity Program;
- Removes references to the Broadband Pole Replacement Trust Fund and related provisions;
- Removes the appropriation to the Broadband Opportunity Program;
- Allows for reimbursement of pole replacement costs made after July 1, 2022;
- Provides for reimbursement on a first-come, first-served basis;

[57] Department of Economic Opportunity, *2022 Agency Legislative Bill Analysis SB 1800*, February 21, 2022 (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).
[58] *Id*.

- Requires the Office of Broadband to publish an application form by September 1, 2022;
- Clarifies the documentation necessary for the application;
- Removes the authorization for reimbursement of administrative costs to submit the application;
- Requires any reimbursements made with funds appropriated from federal funds to also meet federal grant requirements;
- Clarifies the rulemaking authority; and
- Changes the effective date to July 1, 2022.

**CS by Commerce and Tourism on January 24, 2022:**
Inserts the bill number assigned to linked bill, CS/SB 1802, which creates the Broadband Pole Replacement Program, in the contingent effective date.

B. Amendments:

None.