

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 1800

INTRODUCER: Commerce and Tourism Committee and Senator Boyd

SUBJECT: Broadband Infrastructure

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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 costs, 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 the Department 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, SB 1802.

For the 2022-2023 fiscal year, the bill appropriates \$400 million in nonrecurring funds from the General Revenue Fund to the Department for the purpose of administering the Broadband Opportunity Program established in s. 288.9962, F.S.

CS/SB 1800 takes effect upon becoming law if SB 1802, or similar legislation, is adopted in the same legislative session or an extension thereof and becomes law.

## II. 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> Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.<sup>2</sup>

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).<sup>3</sup> 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.<sup>4</sup>

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>5</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>6</sup> One key factor in deploying broadband infrastructure is access to utility poles, upon which broadband providers affix their infrastructure.<sup>7</sup> 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 even replacement of the entire pole.<sup>8</sup>

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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 Jan. 21, 2022).

<sup>2</sup> FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf> (last visited Jan. 21, 2022).

<sup>3</sup> 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), available at <https://crsreports.congress.gov/product/pdf/R/R46307> (last visited Jan. 21, 2022).

<sup>4</sup> CRS, Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), available at <https://fas.org/sgp/crs/misc/RL30719.pdf> (last visited Jan. 21, 2022).

<sup>5</sup> FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf> (last visited Jan. 21, 2022). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.

<sup>6</sup> National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), available at <https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report> (last visited Jan. 21, 2022). See also CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 7.

<sup>7</sup> Kristian Stout, Ben Sperry, International Center for Law and Economics, *Issue Brief: Pole Attachments and Broadband Build-out: The Case for Reform*, 3 (Jul. 2021), <https://laweconcenter.org/wp-content/uploads/2021/07/Pole-Attachment-Issue-Brief.pdf> (last visited Jan. 21, 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](https://www.ncta.com/sites/default/files/2020-07/071620_17-84_NCTA_Petition_for_Declaratory_Ruling.pdf).)

<sup>8</sup> R Street, *Pole Replacement Explainer* (Apr. 2021), <https://www.rstreet.org/wp-content/uploads/2021/04/explainer23.pdf> (last visited Jan. 21, 2022). See also, Edward Lopez and Patricia Kravtin, Connect the Future, *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, 3, <https://connectthefuture.com/wp-content/uploads/2021/11/Advancing-Pole-Attachment-Policies-To-Accelerate-National-Broadband-Buildout-National-Report.pdf> (last visited Jan. 21, 2022).

Communities that lack broadband access can have difficulty attracting new capital investment.<sup>9</sup> 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.<sup>10</sup>

## **Federal Broadband Initiatives**

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

The 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, and an additional allocation based on the state's population, proportion of its population that lives in rural areas, and proportion of individuals who receive a household income below 150 percent of the poverty line.<sup>13</sup>

Eligible states must submit both an application (due date passed on December 27, 2021) and a grant plan (due 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.

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>15</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>16</sup>

### ***FCC Digital Opportunity Data Collection Program***

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States.<sup>17</sup> 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.<sup>18</sup> In March 2020,

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<sup>9</sup> CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.

<sup>10</sup> New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap* (Aug. 6, 2020), available at <https://research.newamericaneconomy.org/report/internet-access-covid-19/> (last visited Jan. 21, 2022).

<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 Jan. 21, 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 Jan. 21, 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 Jan. 21, 2022).

<sup>15</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>16</sup> *Id.* at 7.

<sup>17</sup> FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), available at <https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data> (last visited Jan. 21, 2022).

<sup>18</sup> *Id.* at 3.

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.<sup>19</sup> Congress allocated \$65 million to the FCC to achieve this mapping project in December 2020.<sup>20</sup>

To create these geographic service maps, the FCC collects information from service providers according to specific reporting standards. 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.<sup>21</sup> The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.<sup>22</sup> The FCC is in the process of updating its broadband maps with more detailed and precise information.<sup>23</sup>

### ***FCC's Rural Digital Opportunity Fund<sup>24</sup>***

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 least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).<sup>25</sup> Florida entities received over \$190 million (to be distributed over the next 10 years) in this first round of funding.<sup>26</sup>

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.<sup>27</sup> 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.<sup>28</sup>

### ***U.S. Department of Agriculture 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>29</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

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<sup>19</sup> 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).

<sup>20</sup> Marguerite Reardon, CNET, *FCC Chair Rosenworcel Launches Broadband Mapping Taskforce* (Feb. 17, 2021), available at <https://www.cnet.com/news/fcc-chair-rosenworcel-launches-broadband-mapping-task-force/> (last visited Jan. 21, 2022).

<sup>21</sup> FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 17 at 5, 8-16.

<sup>22</sup> FCC, *Broadband Data Collection Consumer Information*, <https://www.fcc.gov/BroadbandData/consumers> (last visited Jan. 21, 2022).

<sup>23</sup> FCC, *Broadband Data Collection* (Dec. 15, 2021), <https://www.fcc.gov/BroadbandData> (last visited Jan. 21, 2022).

<sup>24</sup> FCC, *Auction 904: Rural Digital Opportunity Fund: Fact Sheet*, <https://www.fcc.gov/auction/904/factsheet> (last visited Jan. 21, 2022).

<sup>25</sup> FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund* (Feb. 7, 2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0> (last visited Jan. 21, 2022).

<sup>26</sup> Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, available at <https://www.fcc.gov/document/auction-904-winning-bidders> (last visited Jan. 21, 2022).

<sup>27</sup> *See*, FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 25 at 3.

<sup>28</sup> FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 25 at 4.

<sup>29</sup> USDA, *Telecom Programs*, available at <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs> (last visited Jan. 21, 2022).

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>30</sup>

### *Miscellaneous Federal Broadband Initiatives*

Multiple federal assets to assist with the expansion of broadband are available, for example:<sup>31</sup>

- The U.S. Department of Housing and Urban Development<sup>32</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>33</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>34</sup>

The COVID-19 relief bill passed by Congress in December 2020<sup>35</sup> included the following funding to expand broadband Internet access for students, families, and unemployed workers:<sup>36</sup>

- \$300 million for rural broadband;<sup>37</sup>
- \$250 million for the FCC's telehealth program;<sup>38</sup>
- \$285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;<sup>39</sup>

<sup>30</sup> See USDA, *ReConnect Loan and Grant Program*, available at <https://www.usda.gov/reconnect#anchor1> (last visited Jan. 21, 2022).

<sup>31</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>32</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 Jan. 21, 2022).

<sup>33</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 Jan. 21, 2022).

<sup>34</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 Jan. 21, 2022).

<sup>35</sup> Consolidated Appropriations Act of 2021, H.R. 133, 116<sup>th</sup> Cong. (2021).

<sup>36</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 Jan. 21, 2022).

<sup>37</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 Jan. 21, 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>38</sup> FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), available at <https://www.fcc.gov/covid-19-telehealth-program> (last visited Jan. 21, 2022).

<sup>39</sup> See generally, NTIA, *Minority Broadband Initiative*, available at <https://www.ntia.doc.gov/category/minority-broadband-initiative> (last visited Jan. 21, 2022).

- \$1.9 billion for “rip and replace” efforts related to Huawei and ZTE equipment in U.S. networks;<sup>40</sup> and
- \$1 billion in grants for tribal broadband programs.<sup>41</sup>

The American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can 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, like broadband infrastructure and \$130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.<sup>42</sup>

Additionally, the Infrastructure Investment and Jobs Act,<sup>43</sup> signed into law on November 15, 2021, contains \$64 billion in funding for broadband expansion and access. The law:<sup>44</sup>

- 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’s Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).<sup>45</sup> The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.<sup>46</sup>

Specifically, the Office must:<sup>47</sup>

- 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

<sup>40</sup> B. Braverman, M. Browne, and J. Mark, *Let Her Rip! FCC Adopts Remove-and-Replace Rules* (Jan. 15, 2021), available at <https://www.dwt.com/insights/2021/01/fcc-huawei-zte-rip-and-replace-rules> (last visited Jan. 21, 2022). See also, FCC, *Second Report and Order in re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* (Dec. 10, 2020), available at <https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf> (last visited Jan. 21, 2022).

<sup>41</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 Jan. 21, 2022).

<sup>42</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 Jan. 21, 2022).

<sup>43</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 Jan. 21, 2022).

<sup>44</sup> NTIA, *Infrastructure Investment and Jobs Act Overview*, <https://www.ntia.doc.gov/category/grants> (last visited Jan. 21, 2022).

<sup>45</sup> Chapter 2020-26, Laws of Fla.

<sup>46</sup> 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 Jan. 21, 2022).

<sup>47</sup> Section 288.9961(4), F.S.

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<sup>48</sup> areas of the state through grant programs;
- 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>49</sup>.

The DEO 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 DEO has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.<sup>50</sup>

### ***Broadband Opportunity Program***<sup>51</sup>

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.

The Office has not received funding for the program, and no grants have been made available.

### **Regulation of Pole Attachments**

Utility poles may be installed and owned by different kinds of utilities,<sup>52</sup> such as electrical or telecommunications providers.<sup>53</sup> “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

<sup>48</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 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.

<sup>49</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>50</sup> Section 288.9961(5), F.S.

<sup>51</sup> Section 288.9962, F.S.

<sup>52</sup> 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.”

<sup>53</sup> 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 Jan. 21, 2022).

Internet, and wireless service.<sup>54</sup> 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.”<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup>

Congress began regulating pole attachments<sup>58</sup> in 1978.<sup>59</sup> The Telecommunications Act (Act) of 1996<sup>60</sup> added provisions making access to utility poles mandatory for telecommunications services providers,<sup>61</sup> and providing for nondiscriminatory access, unless there is insufficient capacity and reasons of safety, reliability and generally applicable engineering purposes.<sup>62</sup> Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.<sup>63</sup>

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 services.”<sup>64</sup> As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.<sup>65</sup> In 2021, the Florida Legislature passed SB 1944, which transfers this regulatory authority to the Florida PSC;<sup>66</sup> the PSC is still in the process of adopting rules to complete this transfer.<sup>67</sup>

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<sup>54</sup> Florida Public Service Commission, *What’s on a Utility Pole?*, <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited Jan. 21, 2022).

<sup>55</sup> S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.

<sup>56</sup> 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.

<sup>57</sup> 47 U.S.C. § 253(c).

<sup>58</sup> 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.”

<sup>59</sup> 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).

<sup>60</sup> Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

<sup>61</sup> 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).

<sup>62</sup> Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

<sup>63</sup> 47 U.S.C. s. 224(a)(1).

<sup>64</sup> 47 U.S.C. s. 224(c)(2).

<sup>65</sup> 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 Jan. 21, 2022).

<sup>66</sup> Ch. 2021-191, Laws of Fla.

<sup>67</sup> 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 Jan. 21, 2022).



In April 2011, the FCC approved a pole attachment order, which established a revised telecommunications formula and included make-ready<sup>68</sup> provisions which provided a benchmark for pole attachment rates and access.<sup>69</sup>

In September 2018, the FCC issued an order<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

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.

### ***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.<sup>73</sup>

Section 288.9963, F.S., further 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 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

<sup>68</sup> “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).

<sup>69</sup> 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).

<sup>70</sup> 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.”

<sup>71</sup> 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 Jan. 21, 2022).

<sup>72</sup> CRS, *Overview of Legal Challenges to the FCC’s 5G Order on Small Cell Siting supra*, note 70, 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.

<sup>73</sup> Section 288.9963(3), F.S.

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,<sup>74</sup> the replacement cost may not be passed on to the broadband provider.

### III. Effect of Proposed Changes:

#### **Broadband Pole Replacement Program**

The bill creates the Broadband Pole Replacement Program (Program) within the Department's Office of Broadband. 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 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.<sup>75</sup> Additionally, the applicants' pole replacements must occur in unserved areas<sup>76</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 under the Program 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.

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;

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<sup>74</sup> "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.

<sup>75</sup> This requirement is consistent with the U.S. Dep't. of Commerce Coronavirus Capital Projects Fund, which requires projects to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if that is impracticable, the project can be designed to reliably meet or exceed 100/20 Mbps speeds, and be scalable to a minimum of 100 Mbps symmetrical download and upload speeds. 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>76</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.

- 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 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 of (1) up to 50 percent of the total amount it paid for eligible pole replacement costs, or \$5,000, whichever is less; and (2) up to 100 percent of its actual and reasonable administrative expenses paid to prepare and submit the application. This reimbursement of administrative expenses cannot exceed 5 percent of the eligible pole replacement costs that the applicant requests in its application.

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. 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 s. 288.9964, F.S., 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 the Department to apply for \$100 million in federal funding for the 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, SB 1802. If Florida receives federal funds from the Coronavirus Capital Projects Fund, then state funds allocated to the Program must be reduced by an equal amount.

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 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, President of the Senate, and the Speaker of the House of Representatives within 1 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 specifically does not authorize rulemaking authority for the department, the office, or any other agency, to administer the Program.

The Office of the Auditor General must perform an audit of the Trust Fund and its administration for compliance with pertinent law within 1 year after funds are deposited into the Trust Fund.

### **Broadband Opportunity Program**

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 of Broadband within the Department of Economic Opportunity 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 SB 1802 or similar legislation is adopted in the same legislative session or an extension thereof and also becomes law.

## **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.

## **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 created in the bill. It is unclear whether the Department will require additional funds or FTE's to administer the program. However, linked bill, SB 1802, allows funds deposited into the Broadband Pole Replacement Trust Fund to be used to administer the Program.

**VI. Technical Deficiencies:**

The deadline to submit an application for the Coronavirus Capital Projects Fund was December 27, 2021. It is unclear whether the Secretary will be able to comply with the requirement in the bill to apply for federal funds available under the Coronavirus Capital Projects Fund.

**VII. Related Issues:**

The Department will be limited in its administration of the Program to exclusively those requirements established in s. 288.9964, F.S., as it is not granted rulemaking authority to enlarge or alter the Program further. This may result in a less agile or responsive Program that will require further Legislative action to, e.g., change its application criteria, or conduct investigations of violations beyond the scope of the bill.

**VIII. Statutes Affected:**

This bill substantially amends section 288.9961 of the Florida Statutes, and 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.)**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.