

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: CS/SB 1560

INTRODUCER: Commerce and Tourism Committee and Senator Ausley

SUBJECT: Broadband Internet Service

DATE: April 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1560 expands the duties of the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO) to further the development of broadband Internet service in Florida.

The bill requires the Office to undertake two mapping programs: one that identifies Florida's geographic availability of broadband and one that inventory assets that may be used for the further buildout of broadband infrastructure. The first maps are due June 30, 2022.

The bill creates the Broadband Opportunity Program, administered by the Office, to award grants for the expansion of broadband Internet service in unserved and underserved areas of Florida. The program is subject to appropriation.

The bill also creates the Broadband Deployment Task Force within the Office to support and provide recommendations to the Office for the deployment of broadband Internet throughout Florida. The task force is required to identify federal funding sources, gaps in service areas, and strategies for expansion, among other duties. The task force is required to submit a report to the Governor and the Legislature annually, with the first report due December 30, 2022.

The bill expands the Office's local technology planning teams' duties to focus on rural, unserved, and underserved areas; and requires the Office to identify potentially eligible

households for the federal Emergency Broadband Benefit Program and provide other information to them.

The increased duties required by the bill will have a significant negative fiscal impact on the agency. The DEO estimates a cost of about \$3.7 million in Fiscal Year 2021-2022 and a recurring cost of about \$1.7 million. The bill makes no appropriations for the increased workload, including the mapping; the task force; or the grant program, which is subject to appropriation.

The bill is effective July 1, 2021.

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 requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.²

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.³ This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.⁴ Communities that lack broadband access can have difficulty attracting new capital investment.⁵ 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.⁶

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

¹ 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 Mar. 28, 2021).

² 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 Mar. 28, 2021).

³ FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf> (last visited Mar. 28, 2021). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.

⁴ National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), available at https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Mar. 28, 2021). See also Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7 (Oct. 25, 2019), available at <https://fas.org/sgp/crs/misc/RL30719.pdf> (last visited Mar. 28, 2021).

⁵ CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.

⁶ 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 Mar. 15, 2021).

second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).⁷ 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.⁸

Federal Broadband Initiatives

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.⁹ 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.¹⁰ 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.¹¹ Congress allocated \$65 million to the FCC to achieve this mapping project in December 2020.¹²

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.¹³ The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.¹⁴ The FCC anticipates completing initial, targeted mapping by July 2021.¹⁵

FCC's Rural Digital Opportunity Fund

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America over the next decade. The first phase of the fund began in 2020 and made available up to \$16 billion 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).¹⁶

⁷ 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 Mar. 15, 2021).

⁸ CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 1.

⁹ 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 Mar. 28, 2021).

¹⁰ *Id.* at 3.

¹¹ 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).

¹² 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 Mar. 28, 2021).

¹³ FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 15 at 5, 8-16.

¹⁴ FCC, *Broadband Data Collection Consumer Information*, available at <https://www.fcc.gov/BroadbandData/consumers> (last visited Apr. 1, 2021).

¹⁵ FCC, *Carr Welcomes New, Four-Month Timeline for Broadband Maps*, available at <https://docs.fcc.gov/public/attachments/DOC-370911A1.pdf> (last visited Apr. 1, 2021).

¹⁶ 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 Mar. 28, 2021).

Florida entities received over \$190 million (to be distributed over the next 10 years) in this first round of funding.¹⁷

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.¹⁸ 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.¹⁹

FCC's Emergency Broadband Benefit Program

Congress appropriated \$3.2 billion in December 2020 to expand broadband access via subsidies for broadband service to students, families, and unemployed workers.²⁰ Eligible households can receive a discount of up to \$50 per month off their broadband service bill for service and associated equipment. A household is eligible to receive a subsidy if any member of the household: qualifies for the Lifeline program, receives benefits under the free or reduce-price school lunch program, received a Federal Pell Grant, experienced a substantial loss of income in the last year and had a total household income in 2020 below \$99,000 for single filers and \$198,000 for joint filers, or meets criteria to participate in service providers' existing low-income or COVID-19 programs.²¹ The program will conclude when all the funding has been expended or six months after the end of the public health emergency.²²

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.²³ 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.²⁴

¹⁷ Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, available at <https://www.fcc.gov/document/auction-904-winning-bidders> (last visited Mar. 28, 2021).

¹⁸ See, FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 3.

¹⁹ FCC, *FCC Launches \$20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 4.

²⁰ National Conference of State Legislatures (NCSL), *COVID-19 Economic Relief Bill: Broadband Provisions* (Jan. 4, 2021), available at <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx> (last visited Mar. 28, 2021).

²¹ FCC, *Emergency Broadband Benefit Program*, <https://www.fcc.gov/broadbandbenefit> (last visited Mar. 28, 2021).

²² See FCC, *FCC Adopts Report and Order for Emergency Broadband Benefit Program*, available at <https://www.fcc.gov/document/fcc-adopts-report-and-order-emergency-broadband-benefit-program-0> (last visited Mar. 31, 2021).

²³ USDA, *Telecom Programs*, available at <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs> (last visited Mar. 28, 2021).

²⁴ See USDA, *ReConnect Loan and Grant Program*, available at <https://www.usda.gov/reconnect#anchor1> (last visited Mar. 28, 2021).

Miscellaneous Federal Broadband Initiatives

Federal assets to assist with the expansion and promotion of broadband comes from a variety of sources, for example:²⁵

- The FCC’s E-Rate Universal Service Fund subsidizes telephone service (including broadband Internet access) to low-income households, high-cost areas, rural healthcare providers, and eligible schools and libraries;²⁶
- The U.S. Department of Housing and Urban Development²⁷ and Department of Education²⁸ offer 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;²⁹ and
- The National Telecommunications and Information Administration within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.³⁰

The COVID-19 relief bill passed by Congress in December 2020³¹ included the following funding to expand broadband Internet access for students, families, and unemployed workers:³²

- \$300 million for rural broadband;³³
- \$250 million for the FCC’s telehealth program;³⁴
- \$285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;³⁵

²⁵ 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 (last visited Mar. 28, 2021).

²⁶ FCC, *E-Rate: Universal Service Program for Schools and Libraries* (Sep. 16, 2020), available at <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate> (last visited Mar. 28, 2021).

²⁷ 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 Mar. 28, 2021).

²⁸ U.S. Department of Education, *Rural and Low-Income School Program*, available at <https://www2.ed.gov/programs/reaprlisp/index.html> (last visited Mar. 28, 2021).

²⁹ 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 Mar. 28, 2021).

³⁰ 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 Mar. 28, 2021).

³¹ Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021).

³² NCSL, *COVID-19 Economic Relief Bill: Broadband*, *supra* note 24..

³³ 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 Mar. 28, 2021). 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 a speed of 25/3Mbps or higher.

³⁴ FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), available at <https://www.fcc.gov/covid-19-telehealth-program> (last visited Mar. 28, 2021).

³⁵ See generally, NTIA, *Minority Broadband Initiative*, available at <https://www.ntia.doc.gov/category/minority-broadband-initiative> (last visited Mar. 28, 2021).

- \$1.9 billion for “rip and replace” efforts related to Huawei and ZTE equipment in U.S. networks;³⁶ and
- \$1 billion in grants for tribal broadband programs.³⁷

Additionally, 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.³⁸

Other State Action

All 50 states have created either a task force, commission, or authority to coordinate broadband expansion.³⁹ One organization has studied the work of several state broadband offices authorities and determined that effective practices include stakeholder outreach and engagement at both the state and local levels; thorough development of a policy framework with well-defined goals; adoption of a state broadband plan; and helping communities identify their broadband goals and needs to better connect them with satisfactory resources.⁴⁰

Florida’s Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).⁴¹ The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.

Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in Florida which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community

³⁶ 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 Mar. 28, 2021). 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 Mar. 28, 2021).

³⁷ 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 Mar. 28, 2021).

³⁸ 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*, available at <https://home.treasury.gov/news/press-releases/jy0069> (last visited Apr. 2, 2021).

³⁹ NCSL, *State Broadband Task Forces, Commissions or Authorities and Other Broadband Resources* (June 2020), available at <https://www.ncsl.org/research/telecommunications-and-information-technology/state-broadband-task-forces-commissions.aspx> (last visited Mar. 28, 2021).

⁴⁰ Kathryn de Wit, Pew Charitable Trusts, *How States are Expanding Broadband Access* (Feb. 27, 2020), available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/02/how-states-are-expanding-broadband-access> (last visited Mar. 15, 2021).

⁴¹ Chapter 2020-26, Laws of Fla.

organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;

- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved⁴² 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.⁴³

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.⁴⁴

III. Effect of Proposed Changes:

Office of Broadband Mapping Requirements (Section 1, amending s. 364.0135, F.S.)

The bill expands the Office's duties to require it to develop geographical information system (GIS) maps of Florida's broadband Internet service availability by June 30, 2022, and to update the mapping annually thereafter. The mapping must be consistent with the FCC's Digital Opportunity Data Collection Program and be made in consultation with other state agencies, local governments, service providers, private businesses, educational institutions, and community organizations and leaders.

The maps must specifically identify:

- Where broadband-capable networks currently exist and where broadband Internet service is available to Florida's consumers.
- The download and upload rates at which service providers make broadband Internet service available to Florida's businesses and individuals.
- Gaps in Florida's broadband Internet service coverage—especially any areas that are underserved or unserved within rural areas of opportunity.⁴⁵
- Any other mapping information that another Florida agency has already compiled.
- Locations where broadband Internet service is not available, or is provided at speeds below 25/3 Mbps, as identified by public input.

The bill permits the Office to collaborate with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to create a process to collect and verify public data regarding the availability of broadband Internet service. This may be repetitive of the current requirement in s. 364.0135(4)(a), F.S., that the Office include a process to review

⁴² Section 364.0135(2)(d), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream

⁴³ Section 364.0135(4), F.S.

⁴⁴ Section 364.0135(5), F.S.

⁴⁵ The currently designated rural areas of opportunity (RAOs) are the Northwest RAO, the South Central RAO, and the North Central RAO. See DEO, *Rural Areas of Opportunity*, available at <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Mar. 28, 2021).

and verify public input regarding transmission speeds and availability of broadband Internet service in its strategic plan.

The Office must also verify any mapping data it receives from another governmental entity or a contractor by comparing it to the source of the data and by evaluating the collection methodology, study organization, and verification processes. If a contractor is used, the governmental entity must also describe the contractor collecting the data.

The bill also requires the Office to create another GIS map by June 30, 2022, that details Florida's broadband infrastructure assets. This map must include the location of any state and federal physical or funding assets that can be used for expanding broadband infrastructure by, e.g., burying or stringing fiber optic cable. Such assets include municipally or city-owned towers, public transportation corridors, capital projects, community-owned land and infrastructure (such as utility poles), and federal E-rate funding commitments.

Florida Broadband Opportunity Program (Section 2, amending s. 364.0136, F.S.)

The bill creates the Broadband Opportunity Program, which will award grants of up to \$5 million per project to applicants who seek to expand access to broadband Internet service in unserved and underserved areas of the state. The Office will administer the grant program. Entities may apply for grants to fund the installation or deployment of infrastructure that supports broadband Internet service in underserved or unserved areas. Eligible entities to apply for a grant include businesses and Indian tribes. The grant program is subject to appropriation and state funds may not be used to install or deploy broadband Internet service in a geographic area that already has service from at least one provider.

Applicants must submit a grant application to the Office, which must include:

- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed;
- Evidence demonstrating the unserved or underserved nature of the project area and the number of households and businesses that would have new access to broadband Internet service or that would have upgraded broadband Internet service as a result of the grant;
- A list of significant community institutions that would benefit from the grant;
- The total cost of the project and the timeframe in which it would be completed;
- Sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.

The Office must publish the criteria and quantitative scoring system it will use to evaluate applications and award grants each fiscal year. The criteria and quantitative scoring system must include the criteria listed in the bill, as discussed below.

After it receives grant program applications, the Office must publish the proposed areas to be served and the proposed broadband Internet speed at which the area will be served. A broadband Internet service provider that provides existing service in, or adjacent to, a proposed project area

may challenge the grant program applicant's plan. The challenge must be made within 45 days of the Office publishing the application information and demonstrate that:

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

The Office must notify the applicant if a challenge is made. If the Office determines that the challenge is valid, the Office may not fund the challenged project. If a challenger fails to fulfill its commitment to provide broadband Internet service in accordance with its challenge, it is excluded from submitting another challenge for the next two grant cycles, unless the Office determines the failure to fulfill the commitment was due to circumstances beyond provider's control.

The Office must prioritize applications that:

- Offer broadband Internet service to community institutions including 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;
- Provide for scalability to transmission speeds of at least 100/10 Mbps;
- 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 and underserved households and businesses;
- Leverage greater amounts of funding for the project from private sources; or
- Demonstrate consistency with the Office's strategic plan.⁴⁶

The Office must attempt to award grants to qualified applicants in all regions of the state. The Office cannot award grants:

- To provide broadband Internet service to an area that already has broadband Internet service from at least one provider.
- To a governmental entity, rural electric cooperative or its broadband affiliate, or an educational institution or affiliate, for the purpose of providing broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed broadband Internet service to the unserved or underserved area.
- For the purpose of serving any retail end user that already has access to broadband Internet service.
- To any entity if, when combined with any other state or local funds, the grant will constitute more than 50 percent of the project's funding.

⁴⁶ The Office has not published a strategic plan at this time.

The Office also cannot award grants to provide service in a project area that has received any other federal funding. It is unclear if this prohibition applies only to federal funding for broadband or any federal funding at all, regardless of the purpose.

The Office must enter into an agreement with the applicant that is awarded a grant under the grant program. The agreement must specify the total amount of the grant, performance conditions, payment schedule, and sanctions for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

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

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

Florida Broadband Deployment Task Force (Section 1, amending s. 364.0135(5), F.S.)

The bill creates a Broadband Deployment Task Force to support and provide recommendations to the Office for the deployment of broadband Internet service throughout Florida, including addressing rural infrastructure issues and urban adoption strategies.

The task force members must have an interest and significant expertise in broadband and the bill establishes the membership as follows:

- One member each from the Department of Agriculture and Consumer Services, the Department of Management Services, the Department of Transportation, the Department of Education, the Department of Health, and the Office of Technology and Information Services, all of whom will be appointed by his or her respective agency head;
- One member from the Florida Association of Counties to represent underserved or unserved rural communities, who will be appointed by the DEO's executive director;
- One member of the Florida League of Cities to represent underserved or unserved rural communities, who will be appointed by the DEO's executive director;
- Two members of the public—one who lives in an underserved area and one who lives in an unserved area of Florida—who will be appointed by the Governor; and
- One member from each of the following types of broadband industry providers, who will all be appointed by the Governor: a wireless provider, a wireline provider, a broadband satellite provider, a cable provider, a rural local exchange carrier, and a competitive local exchange carrier.

The initial task force members must be appointed by September 1, 2021. The DEO is required to provide administrative and technical assistance to the task force.

The bill outlines the following specific duties for the task force:

- Identify federal funding sources to assist with the expansion or improvement of broadband Internet in Florida;
- Identify geographic gaps in Florida’s broadband Internet service coverage;
- Develop strategies to expand broadband Internet service to rural areas of opportunity—including establishing partnerships with local governments, other state and federal entities, electric utilities, businesses, and the public;
- Develop an urban adoption strategy to address the affordability of broadband Internet service in areas that have service;
- Identify specific projects to further deploy broadband Internet service throughout Florida, including grants provided through the Rural Infrastructure Fund;^{47,48}
- Coordinate with the Cabinet, state agencies, and other governmental entities that have oversight in broadband Internet activities or that control potential funding opportunities; and
- Recommend outreach strategies and partnerships to best use the federal Emergency Broadband Benefit Program.

The Office is tasked by current law to create a strategic plan for increasing the use of broadband Internet service in the state. The bill does not require coordination with the plan and the strategies required to be developed by the task force.

The task force is required to submit a report that details its findings and recommendations to the Governor, President of the Florida Senate, and Speaker of the Florida House of Representatives by December 30, 2022, and each year thereafter.

Office of Broadband’s Role in the Emergency Broadband Benefit Program (Section 3, creating s. 364.0137, F.S.)

The bill requires the Office to establish a process to identify households that may be eligible to receive a subsidy under the federal Emergency Broadband Benefit Program. The Office must also, when possible, provide notice to identified households that they may be eligible to receive assistance under the program along with information on other state or federal resources that may provide assistance with debt relief.

The bill adopts the federal Emergency Broadband Benefit Program recipient eligibility language, as discussed above in the Present Situation.

⁴⁷ The purpose and direction of identifying projects is unclear. The task force could identify projects that will further deploy broadband, but the inclusion of “including grants provided through the rural infrastructure fund” creates confusion on whether the task force is also reviewing projects for eligibility or simply identifying sources of funding.

⁴⁸ The Rural Infrastructure Fund is administered by the DEO with the purpose of facilitating the planning and financing of rural infrastructure projects in Florida. There are several categories of eligible projects for the program, including a project that makes improvements to access and availability of broadband Internet service *See, DEO, Rural Infrastructure Fund, available at <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund>* (last visited Mar. 31, 2021).

The bill requires providers to provide the subsidies in compliance with the federal program. A provider cannot disqualify an eligible household because a member of the household owes payments to the provider or has owed payments in the past. The bill continues to mirror the federal law by requiring that the subsidy must be up to \$50, but no more than the standard rate for service and associated equipment.

Local Technology Planning Teams

Current law requires the Office to create local technology planning teams or partnerships, the membership of which consists of representatives of education, health care, private business, agriculture, economic development organizations, local government, and tourism. Current law does not provide a specific purpose or goal for these teams. The bill adds language that targets the teams' work to unserved and underserved communities—especially fiscally constrained counties. The bill outlines the following duties for the teams:

- Work with rural communities to help them understand their current service availability;
- Locate unserved and underserved businesses or residents;
- Identify assets that may be used to further deploy broadband;
- Build partnerships with broadband service providers;
- Identify opportunities to increase the use and deployment of broadband in the community; and
- Be proactive in fiscally constrained counties to identify and provide assistance with applications for federal broadband grants.

Miscellaneous

Legislative Findings

The bill updates the legislative findings to state that Florida's sustainable adoption of broadband Internet service is essential to all its residents, rather than beneficial to specific entities.

Definitions

The bill adds a definition of the term "unserved" to mean a geographic area of Florida in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a speed of 25/3 Mbps—the speed used by the FCC to define sufficient broadband Internet.

The bill also amends the definition of "underserved" to mean a geographic area of Florida in which there is no internet service provider that offers a connection to the Internet with a capacity for transmission at a speed of 100/10 Mbps. This is higher than any current definition of broadband.

Public Records

The bill adds language that clarifies that any information that is already confidential or exempt from public disclosure under ch. 119, F.S., when held by the DEO retains that confidentiality or exemption when given to the DEO by a broadband service provider pursuant to s. 364.0135, F.S.

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁴⁹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.⁵⁰

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that Florida agencies must provide access to its public records.⁵¹ The Legislature may exempt specific types of public records from public access requirements;⁵² the exemption must state with specificity the public necessity that justifies the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.⁵³ For example, s. 288.075(3) and (4), F.S., make trade secrets held by an economic development agency and proprietary confidential business information held by an economic development agency, respectively, confidential and exempt from s. 119.071(1), F.S.

Effective Date

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create a new public records exemption or expand an existing exemption.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁴⁹ Art. I, s. 24(a), Fla. Const.

⁵⁰ *Id.*

⁵¹ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵² Art. I, s. 24(c), Fla. Const.

⁵³ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

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 and identifying funding sources to subsidize other related costs. The bill will benefit eligible providers by assisting them to expand their services.

Households eligible for the federal Emergency Broadband Benefit Program may benefit from notification by the DEO of their potential eligibility for the program.

C. Government Sector Impact:

The bill creates several new duties for the DEO, including:

- Undertaking GIS mapping for both broadband Internet service availability and broadband infrastructure assets;
- Gathering public input for the service availability map;
- Providing administrative and technical support to the task force created within the Office;
- Administering the Broadband Opportunity Program; and
- Identifying and providing information to potentially eligible households for the federal Emergency Broadband Benefit Program.

The bill does not appropriate the Office any resources or funding to complete these expanded duties. To staff the Office to meet these new duties, the DEO estimates the need for 3 FTE and 1 OPS, at a total cost of about \$321,000 recurring.⁵⁴

The DEO estimates that to hire a vendor and complete project setup for the GIS mapping would cost about \$1 million in Fiscal Year 2021-2022 and \$500,000 recurring for yearly maintenance and updates. Related to the broadband infrastructure asset mapping, the DEO estimates that to hire a vendor and complete project setup for the asset mapping would cost about \$1 million in Fiscal Year 2021-2022 and \$500,000 recurring for yearly maintenance and updates.

⁵⁴ Fiscal impacts attributed to DEO estimates are from DEO, *Fiscal Request – SB 1560 Broadband Internet Service* (April 5, 2021) (on file with the Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee).

To establish the task force, host and conduct the meetings, pay for travel and per diem expenses, and complete the annual report, the DEO estimates a cost of \$300,000 recurring. The task force is required to verify any mapping data it receives from another governmental entity or contractor; the DEO anticipates hiring a vendor to assist with this requirement, with an initial setup cost of \$1 million in in Fiscal Year 2021-2022.

Related to the new duties that the bill prescribes to local technology planning teams, the DEO estimates a recurring cost of \$100,000 to provide administrative support and cover the costs of meeting and other related expenses.

The bill does not appropriate any funds to the Broadband Opportunity Program, created in the bill to provide grants to support the growth of broadband Internet infrastructure in Florida. The bill provides that this program is subject to appropriation. At this time, no funding is provided in SB 2500 for this program.

VI. Technical Deficiencies:

On line 192, the bill incorrectly refers to a “board” that shall adjust its geographic information system maps to reflect information received from the public. This should refer to the “office.”

VII. Related Issues:

Section 20.052, F.S., sets forth requirements for advisory bodies created by law. The body must be created only when found to be necessary and beneficial to furthering a public purpose, and it must be terminated when that need or benefit no longer exists. The body may not be created unless it meets a statutorily defined purpose; its powers and responsibilities conform with s. 20.03, F.S., as discussed below; its members are appointed to 4-year staggered terms; and its members serve without additional compensation or honorarium, unless otherwise expressly provided, and are authorized to receive only per diem and reimbursement for travel.

The bill states that the task force shall operate in a manner consistent with s. 20.052, F.S. The bill does not expressly provide for task force member terms, whether the members are authorized to receive per diem or travel reimbursement, or the duration of the task force. By operating in a manner consistent with s. 20.052, F.S., the term of task force members is 4 years, though the application of staggered terms is not clear, and task force members serve without additional compensation, but are entitled to per diem or travel reimbursement.

Section 20.03, F.S., defines a “task force” as an advisory body that is created by a specific statutory enactment for a time not to exceed 3 years and that will cease to exist after it completes its assignment. The bill does not create a term of existence for the task force and further requires it to create and submit an annual report each year after its initial report is due in 2022. This may conflict with the duration of task forces described in s. 20.03, F.S.

Related to the membership of the Broadband Deployment Task Force the bill requires a member to be from the Office of Technology and Information Services. The bill does not specify the

agency, but it is likely that this is the office within the Department of Environmental Protection that, in part, maintains geographic information systems maps of the state.⁵⁵

The relationship between the Office and the task force is unclear and each may have duplicative duties. The task force is created to “support and provide recommendations” to the Office related to the deployment of broadband Internet service in Florida. However, none of the duties of the task force are directed to the Office, the Office is not required to participate or take any action with regard to the various task force duties, and the task force is required to issue an annual report to the Governor and the Legislature. It may be that the task force is instead meant to act as a body independent of the Office.

The bill requires the Office to establish a mechanism to receive and verify public input as part of its mapping process. This may be repetitive of the current requirement in 364.0135(4)(a), F.S., that the Office include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service in its strategic plan.

Related to the Broadband Opportunity Program, the bill requires the Office to submit an annual report. This report requires a list grant applications received during the previous fiscal year and a list of all written challenges during the previous year. It may be more beneficial for both lists to be based upon the same timeframe.

Currently, the Office is required to encourage the use of broadband Internet service through state grant programs. At this time, no grant programs have been funded. However, for any grants to be awarded, the office is required to give priority to certain projects, including those that:

- Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations;
- Encourage the sustainable adoption of broadband in primarily underserved areas by removing barriers to entry;
- Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved areas of the state; and
- Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

The Broadband Opportunity Program is focused on unserved areas, but otherwise prioritizes similar things.

The confidentiality and public record exemption language in s. 364.0135(6), F.S., of the bill appears to reiterate current confidentiality and public record exemption language that already exist elsewhere in law. Therefore, this language appears to be duplicative and unnecessary.

⁵⁵ See s. 20.255(9), F.S., and Florida Department of Environmental Protection, *Geospatial Open Data*, available at <https://geodata.dep.state.fl.us/> (last visited Apr. 1, 2021).

The DEO may lack expertise to be able to identify potentially eligible households for the federal Emergency Broadband Benefit Program and to direct consumers to state or federal resources that may provide assistance with debt relief as required by the bill.

VIII. Statutes Affected:

The bill substantially amends section 364.0135 of the Florida Statutes.

The bill creates the following sections of the Florida Statutes: 364.0136 and 364.0137.

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 March 15, 2021:

The CS creates the Broadband Opportunity Program to award grants to support broadband Internet infrastructure in underserved and unserved areas of Florida. The Grant Program will be administered by the Office and is subject to appropriation.

- B. **Amendments:**

None.