

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 753 Broadband Internet Deployment

SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Clemons and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	18 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Hicks	Davis
3) Commerce Committee			

SUMMARY ANALYSIS

Broadband Internet service has become an essential component of daily life. However, some parts of Florida still do not have access to broadband Internet service. In order to address this issue, various federal programs are available to encourage the expansion of broadband Internet access. While the state has established the Office of Broadband (Office) within the Department of Economic Opportunity (DEO) to facilitate the expansion of broadband Internet service, the state currently does not have any programs or funding mechanisms to increase the availability of such service in the state.

The bill creates the Florida Broadband Opportunity Program (Program) within the Office to award grants to applicants who seek to expand broadband Internet service to unserved and underserved areas of the state. The bill:

- Provides that grants are to be used for the installation and deployment of infrastructure that supports broadband Internet service.
 - Authorizes certain entities to apply for grants, including corporations, not-for-profits, political subdivisions, rural electric cooperatives, and Indian tribes.
 - Provides application requirements.
 - Authorizes existing broadband Internet providers to challenge grant applications if service is already provided or is planned in the area at issue.
 - Provides criteria for evaluating applications.
 - Provides that the grant award combined with other government funding may not fund more than 50 percent of the project's total costs.
 - Requires an annual report to the Governor and Legislature and requires certain information to be provided in the report.
 - Requires the Office's agreement with a grant recipient to contain certain provisions, including sanctions for failure to perform, which may result in grant funds being returned to the Office.
- Reallocates 50 percent of the revenues currently allocated to the M-CORES program to the Office for purposes of administering the grant program.
- Grants DEO rulemaking authority regarding the Office and the grant program.
- Requires the Department of Transportation (DOT) to consult with the Office regarding the use of certain turnpike funds authorized for broadband infrastructure projects in rural areas of opportunity and that the use of such funds be consistent with the office's strategic plan.

The Revenue Estimating Conference has yet to evaluate this bill; however, the bill transfers approximately \$66.3 million in revenue from the State Transportation Trust Fund at the DOT to DEO for the Program in Fiscal Year 2021-2022 and a similar amount in future fiscal years. This is a net neutral fiscal impact on state government.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Broadband Internet Deployment

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

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

Federal Broadband Initiatives

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

The FCC is in the process of adopting more accurate broadband deployment data, including whether broadband Internet service is available to residential and/or business customers in a specific area.⁹

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

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

³ American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), available at https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Feb. 12, 2021).

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

⁵ *Id.*

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

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

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

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

Using this more precise data, the second phase of FCC grants will make available at least \$4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.¹⁰

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

Florida Broadband Program

In 2009, the Legislature authorized the Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida;
- Create a strategic plan to increase use of broadband Internet service in Florida;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

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

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

- Create a strategic plan for increasing the use of broadband Internet service in the state which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved¹⁴ areas of the state through grant programs; and
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.¹⁵

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

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

¹² *Id.*

¹³ Ch. 2020-26, L.O.F.

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

¹⁵ S. 364.0135(4), F.S.

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

CS/HB 969 (2020) provided that up to \$5 million of the funds transferred to Florida's Turnpike Enterprise¹⁷ for the Multi-use Corridors of Regional Economic Significance (M-CORES) program may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The bill required that priority be given to broadband infrastructure projects located in a rural area of opportunity¹⁸ that is adjacent to a multiuse corridor.¹⁹

Multi-Use Corridors of Regional Economic Significance Program

In 2019, the Legislature passed CS/SB 7068, creating M-CORES within the DOT.²⁰ M-CORES' purpose, as stated in the law, is to revitalize rural communities, encourage job creation, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. Its objective is to advance the construction of regional corridors that are intended to accommodate multiple modes of transportation and multiple types of infrastructure. Its list of intended benefits includes addressing broadband connectivity.²¹

In creating M-CORES, the Legislature took a portion of motor vehicle license taxes²² allocated to the General Revenue Fund and reallocated it to the State Transportation Trust Fund (STTF). Funds that result from increased revenues to the STTF made in the M-CORES legislation must be used as follows:

- For the 2019-2020 fiscal year, \$45 million must be retained in the STTF, and the remaining funds must be transferred to the General Revenue Fund.
- For the 2020-2021 fiscal year, \$90 million must be retained in STTF, and the remaining funds must be transferred to the General Revenue Fund.
- For the 2021-2022 fiscal year and each fiscal year thereafter, all of the funds must be retained in the STTF.²³

Effect of the Bill

The bill creates part XV of chapter 288, F.S., relating to the Florida Office of Broadband and moves existing s. 364.0135, F.S., which governs the Office, into chapter 288, F.S., and creates the Broadband Opportunity Program (Program) within the Office.

The Program's purpose is to award grants to applicants who seek to expand access to broadband Internet service²⁴ in unserved²⁵ areas of the state. The Office must administer and act as fiscal agent for the Program and is responsible for receiving and reviewing applications and awarding grants. Funding for the Program comes from a reallocation of 50 percent of the funds from the increased revenues to the STTF derived from the M-CORES Program, for fiscal years 2021-2022 and each fiscal year thereafter. Prior to M-CORES, these funds were allocated to the General Revenue Fund from motor vehicle license taxes.²⁶ The bill transfers these funds to the State Economic Enhancement and Development (SEED) Trust Fund within DEO for purposes of Program grants.

¹⁶ S. 364.0135(5), F.S.

¹⁷ The Florida Turnpike Enterprise is part of the Department of Transportation.

¹⁸ Section 288.0656, F.S., defines a rural area of opportunity (RAO) as a rural community, or region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe of chronic distress, or natural disaster that presents a unique economic development opportunity of regional impact. RAO's are eligible for assistance and other support through the Rural Economic Development Initiative, administered by DEO.

¹⁹ S. 339.0801(2)(b), F.S.

²⁰ Ch. 2019-43, L.O.F.

²¹ S. 337.2278(1)(d), F.S.

²² Motor vehicle license taxes are established in s. 320.08, F.S.

²³ S. 338.2278(7), F.S.

²⁴ The bill defines the term "broadband Internet service" as any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

²⁵ The bill defines the term "unserved" as a geographic area of the state without access to broadband Internet service.

²⁶ See s. 320.08, F.S. (2018).

Grants must fund the installation or deployment of infrastructure that supports broadband Internet service in unserved areas. State funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed²⁷ by at least one provider.

Applicants eligible for grant awards include:

- Corporations, nonprofit corporations, limited liability companies, general partnerships, and limited partnerships.²⁸
- Political subdivisions.
- Rural electric cooperatives and their broadband affiliates.
- Indian tribes.

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

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

- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed to be deployed;
- Evidence demonstrating the unserved nature of the project area;
- 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;
- A list identifying sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.

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

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

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

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

²⁷ The bill defines the term “deployed” as that a provider meets either of the following: Currently provides broadband Internet service in the specific geographic area; or is able to provide broadband Internet service in a specific geographic area to a customer that requests service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period shall be extended to 60 days if permits are needed before the broadband Internet service is activated.

²⁸ These entities must be organized under the laws of the state or otherwise authorized to transact business in the state.

Within three business days after the submission of a written challenge, the Office must notify the applicant, in writing, of the challenge.

The Office must evaluate each challenge. If the Office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

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

In evaluating grant applications and awarding grants, the Office must prioritize applications proposing to serve areas identified by the Office as unserved.

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

- Offer new or substantially upgraded broadband Internet service to important 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, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
- Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;
- Include a component to actively promote the adoption of the newly available broadband Internet services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband Internet service to the greatest number of unserved households and businesses;
- Leverage greater amounts of funding for the project from other private and public sources; or
- Demonstrate consistency with the Office's strategic plan.²⁹

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

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

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

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

- A list of all grant applications received during the previous year and for each application:
 - The results of any quantitative weighting or scoring system the Office used to award grants or rank the applications.
 - The grant amount requested.
 - The grant amount awarded, if any.

²⁹ The Office has yet to issue its strategic plan.

- 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.

The bill amends s. 364.0135, F.S., to define terms, incorporate unserved areas in the list of project priorities, authorize the Office to administer the Program, and grant the Office rulemaking authority relating to the administration of the Office and the Program.

The bill amends s. 339.0801, F.S., to require DOT to consult with the Office to ensure that DOT's broadband infrastructure projects are consistent with the Office's strategic plan.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates part XV of chapter 288, F.S., relating to the Florida Office of Broadband.

Section 2: Renumbers s. 364.0135, F.S., as s. 288.9961, F.S., and amends that section relating to the promotion of broadband adoption and the Florida Office of Broadband.

Section 3: Creates s. 288.9962, F.S., creating the Broadband Opportunity Program.

Section 4: Amends s. 338.2278, F.S., relating to the Multi-Use Corridors of Regional Economic Significance Program.

Section 5: Amends s. 339.0801, F.S., relating to the allocation of increased revenues derived from amendments to s. 319.32(5)(a), F.S., by chapter 2012.128, L.O.F.

Section 6: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill reallocates revenue between two state programs, the M-CORES program within the DOT and the newly created Broadband Opportunity Program within the DEO resulting in a neutral overall fiscal impact on state revenues.

2. Expenditures:

The bill reallocates 50 percent of the revenue currently allocated to the M-CORES program within DOT to administer the Broadband Opportunity Program within DEO. While this provides funding for Program expenditures, the reallocation of funds from the STTF to the SEED TF leaves less revenue available for DOT transportation project expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the Program leads to the deployment of broadband Internet service, this may result in increased economic activity in areas not served by adequate or any broadband Internet service.

Broadband Internet providers may see an increase in revenues associated with grants promoting the deployment of broadband Internet service.

The reallocation of funds from the STTF to DEO may cause a delay in some DOT transportation projects associated with M-CORES, which are included in DOT's work program.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has yet to evaluate this bill; however, based upon 2019 information from the creation of M-CORES, the bill transfers approximately \$66.3 million in revenue from the STTF at DOT to DEO for the Program and a similar amount in future fiscal years.³⁰ This is a net neutral fiscal impact on state government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEO to adopt rules regarding the administration of the Office and the Broadband Opportunity Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits grants being issued to educational institutions unless certain conditions are met; however, the bill does not specifically authorize educational institutions to apply for grants.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Creates a new part of chapter 288, F.S., and moves the following into this new part:
 - The existing statutory section related to the Florida Office of Broadband.
 - The provisions of the bill that create the Broadband Opportunity Program.
- Adds the new term “deployed,” for purposes of determining whether or not broadband Internet service is already available in a specific geographic area.
- Eliminates the term “underserved” but retains the term “unserved” to refer to any area without access to broadband Internet service.
- Prohibits state funds from being used to provide service to places where service has already been deployed by at least one provider.
- Prohibits grants being awarded to governmental entities, rural electric cooperatives, or educational institutions unless other broadband Internet service providers have not deployed services to an unserved area.

³⁰ Florida House of Representatives, 2019 House Bill 7113 Final Bill Analysis. P. 17.

- Expands from one grant cycle to two grant cycles the provision that prohibits the Office of Broadband from considering another challenge from a provider if it does not fulfill its commitment to provide broadband Internet service.
- Makes other technical and conforming changes.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.