

CHAPTER 2021-24

Committee Substitute for Committee Substitute for House Bill No. 1239

An act relating to broadband Internet infrastructure; providing a short title; creating pt. XV of ch. 288, F.S.; relating to the Florida Office of Broadband; transferring, renumbering, and amending s. 364.0135, F.S.; revising and providing definitions relating to broadband Internet service; revising duties of the Florida Office of Broadband; revising the office's strategic plan related to goals and strategies; providing requirements for the development of the plan; requiring the updated plan to be submitted to the Governor and the Legislature by a specified date; requiring the plan to be updated biennially; requiring local technology planning teams or partnerships to work with rural communities for specified purposes; requiring the office to provide technical and planning assistance to rural communities; providing for rulemaking; providing an appropriation to the Department of Economic Opportunity for geographic information system broadband mapping; specifying the development and contents of the maps; creating s. 288.9962, F.S.; creating a grant program within the Florida Office of Broadband; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application requirements; requiring the publication of certain information related to grant applications and grant awards on a website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring that office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website; requiring specified information to be delivered to the Governor and Legislature; creating s. 288.9963, F.S.; providing legislative findings; providing definitions; establishing a promotional rate and related terms for wireline attachments of broadband facilities to municipal electric utility poles; providing procedures and requirements for receiving the promotional rates; establishing cost responsibility for replacement utility poles in certain circumstances; prohibiting municipal electric utilities from increasing certain fees for pole attachments for a specified period; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2. Part XV of chapter 288, Florida Statutes, consisting of sections 288.9961, 288.9962, and 288.9963 is created and entitled "Florida Office of Broadband."

Section 3. Section 364.0135, Florida Statutes, is transferred, renumbered as section 288.9961, Florida Statutes, and amended to read:

288.9961 ~~364.0135~~ Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of ~~this~~ the state and is essential ~~beneficial~~ for all residents of this state, libraries, schools, colleges and universities, health care providers, and community organizations.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Broadband Internet service” means a service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and 3 megabits per second upstream.

(b)(a) “Department” means the Department of Economic Opportunity.

(c) “Deployed” means that a broadband service provider meets either of the following:

1. Currently provides broadband Internet service in a specific geographic area; or

2. Is able to provide broadband Internet service in a specific geographic area to a customer that requests that 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 installed and activated.

(d)(b) “Office” means the Florida Office of Broadband.

(e)(e) “Sustainable adoption” means the ability for communications service providers to offer broadband services in all areas of ~~this~~ the state by encouraging adoption and use ~~utilization~~ levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(f)(d) “Underserved” means a geographic area of ~~this~~ the 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 ~~10~~ megabits per second downstream and at least 10 megabits ~~1~~ megabit per second upstream.

(g) “Unserved” means a geographic area of ~~this~~ state in which there is no provider of broadband Internet service.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this the state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this the state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has goals and strategies for increasing and improving the availability of, access to, and use of broadband Internet service in this the state. In development of the plan, the department shall incorporate applicable federal broadband activities, including any efforts or initiatives of the Federal Communications Commission, to improve broadband Internet service in this state. The plan must identify available federal funding sources for the expansion or improvement of broadband. The strategic plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022. The strategic plan must be updated biennially thereafter. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout this the state.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture. The local technology planning teams or partnerships shall work with rural communities to help the communities understand their current broadband availability, locate unserved and underserved businesses and residents, identify assets relevant to broadband deployment, build partnerships with broadband service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of broadband Internet services in the community. The teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

(c) Provide technical and planning assistance to rural communities.

(d)(e) Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of this the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband Internet service in primarily underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved ~~underserved~~ areas of this the state.

4. 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 this the state.

(e)~~(d)~~ Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in this the state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of this the state are best positioned to benefit from federal and state broadband deployment programs.

(f) Administer the Broadband Opportunity Program established in s. 288.9962.

(5) ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

(d) Adopt rules to implement this part.

Section 4. For the 2021-2022 Fiscal Year, the nonrecurring sum of \$1,500,000 is appropriated from the General Revenue Fund to the Department of Economic Opportunity to develop geographic information system maps of broadband Internet service availability throughout this state consistent with the Digital Opportunity Data Collection program reporting standards established by the Federal Communications Commission. The maps must identify where broadband-capable networks exist, where service is available to end users, gaps in rural areas, and download and upload transmission speeds. Development of the maps may be in collaboration with broadband service providers, state agencies, local governmental entities, private businesses, educational institutions, and community organizations and the maps may incorporate information already compiled by other state

agencies provided that the data is verified and the department can determine that the information was compiled based on a sound and reliable methodology. The department must receive and verify public input to identify locations in which broadband Internet service is not available, including locations in which broadband Internet service is provided at data transmission speeds below the standard established by the Federal Communications Commission for broadband Internet service, and incorporate such information into the development of the maps. The maps must be complete by June 30, 2022.

Section 5. Section 288.9962, Florida Statutes, is created to read:

288.9962 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the office to award grants to applicants who seek to expand broadband Internet service to unserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants.

(2) Subject to appropriation, grants shall be awarded under this section to fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. Grant funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Political subdivisions.

(c) Indian tribes.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity or an 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.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure that is proposed.

(c) Evidence demonstrating the unserved nature of the project area.

(d) The number of households and businesses that would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (8).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) 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 under paragraph (b), a written challenge to an application. The challenge shall contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. 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

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, 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.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider 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 application cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(7)(a) In evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved households and businesses;

8. Leverage greater amounts of funding for a project from private sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 288.9961.

(b) The office must endeavor to award grants to qualified applications serving all regions of this state.

(8)(a) 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.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of \$5 million.

(9) For each grant awarded, the office shall 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.

(10) By January 1, 2023, and each year thereafter, the office shall publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

(a) A list of all grant applications received during the previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. 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 that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous year and the results of those challenges.

Section 6. Section 288.9963, Florida Statutes, is created to read:

288.9963 Attachment of broadband facilities to municipal electric utility poles.—

(1) The Legislature finds that there is a need for increased availability of broadband Internet access throughout this state, particularly in areas where citizens do not have access to acceptable Internet download and upload speeds, or any access at all. The lack of Internet connectivity and widespread broadband availability is detrimental to the growth of the economy, access to telehealth, and educational opportunities. The federal government has provided vast resources for private cable and other broadband providers to expand the deployment of broadband Internet infrastructure in areas where Internet access and broadband Internet services are inadequate or non-existent.

(2) As used in this section, the term:

(a) “Broadband provider” means a person or entity who provides fixed broadband Internet service.

(b) “Broadband service” means a service that provides high speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.

(c) “Safety and reliability standards” includes all applicable engineering, reliability, and safety standards governing the installation, maintenance, and operation of facilities and poles and the performance of all work in and around electric utility facilities, including particular utility standards made available to a broadband provider, and shall include the most current versions of the National Electric Safety Code, the National Electric Code, and the regulations of the Occupational Safety and Health Administration, and other reasonable non-discriminatory safety and engineering requirements, including, but not limited to requirements addressing overloading of electric utility facilities.

(d) “Underserved” means there is no retail access to the Internet at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.

(e) “Unserved” means that there is no retail access to the Internet at speeds of at least 10 megabits per seconds for downloading and 1 megabits per second for uploading.

(f) “Wireline attachment” means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

(3) Beginning July 1, 2021, a broadband provider shall receive a 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 for the time period specified in this subsection.

(a) A broadband provider who wishes to make wireline attachments subject to the promotional rate shall submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved and underserved end users and therefore qualify for the promotional rate set forth in this subsection, together with such information necessary to identify which unserved or underserved end users within the municipal electric utility’s service territory will gain access to broadband service as a result. A copy of the application and plan shall also be submitted simultaneously to the office.

(b) A municipal electric utility shall report to the office which attachments on which utility poles were made available to broadband providers subject to the promotional rate, together with any information available to it regarding which of its municipal electric utility customers do and do not

have access to broadband service and whether they are unserved or underserved.

(c) A broadband provider who makes application for wireline attachments under the promotional rate shall make all reasonable efforts to make broadband service available to the unserved or underserved municipal electric utility customers identified in the application. If a broadband provider fails to make broadband service available to those customers within 12 months, it may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers.

(d) Except as provided in this section, wireline attachments which are subject to the promotional rate must conform to all other terms and conditions of existing pole attachment agreements between the broadband provider and the municipal electric utility. If no agreement exists, the parties shall have 90 days to enter into a pole attachment agreement for all other terms and conditions of attachment.

(e) The promotional rate of \$1 per wireline attachment per pole per year applies to all pole attachments made pursuant to this subsection until July 1, 2024.

(4) All wireline attachments must comply with safety and reliability standards; provided, however, wireline attachments and their replacements, which complied with safety and reliability standards when installed, do not need to be modified to comply with new requirements except as may be necessary for safety reasons, as reasonably determined by the municipal electric utility.

(5) If the municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require, as a condition to attachment, that the broadband provider reimburse all reasonable and nondiscriminatory costs attributable solely to the new attachment minus the salvage value of the removed pole, if positive. The municipal electric utility may not require a utility pole to be replaced to accommodate a broadband provider's attachment except where necessary to comply with applicable engineering and safety standards. With respect to such replacement poles, if the replacement is necessary to correct an existing violation, to bring the pole into compliance with any changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be charged to the broadband provider. As used in this subsection, the term "useful life" means not less than 30 years for wood utility poles and 50 years for concrete, steel, ductile iron, and all other utility poles.

(6) A municipal electric utility may not increase the fees charged to broadband providers for pole attachments between July 1, 2021 and July 31, 2022.

Section 7. This act shall take effect July 1, 2021.

Approved by the Governor May 7, 2021.

Filed in Office Secretary of State May 7, 2021.