


# Commerce Committee

**Monday, February 28, 2022**
**1:00 PM – 3:00 PM**
**Webster Hall (212 Knott)**

# Meeting Packet

**Chris Sprowls**
**Speaker**

**Blaise Ingoglia**
**Chair**

# The Florida House of Representatives

**Commerce Committee**

**Chris Sprowls**
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## Meeting Agenda

Monday, February 28, 2022
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

**IV. Consideration of the following bill(s):**

- CS/CS/HB 1419 Financial Assistance for Municipal Solid Waste-to-Energy Facilities by Appropriations Committee, Tourism, Infrastructure & Energy Subcommittee, Mariano

**Consideration of the following proposed committee substitute(s):**

- PCS for CS/CS/HB 577 -- Tenant Safety
- PCS for HB 1543 -- Broadband Infrastructure
- PCS for HB 1545 -- Trust Funds/Broadband Pole Replacement Trust Fund/DEO

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1419 Financial Assistance for Municipal Solid Waste-to-Energy Facilities
**SPONSOR(S):** Appropriations Committee, Tourism, Infrastructure & Energy Subcommittee, Mariano
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1764

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Tourism, Infrastructure & Energy Subcommittee | 13 Y, 4 N, As CS | Walsh | Keating |
| 2) Appropriations Committee | 22 Y, 1 N, As CS | White | Pridgeon |
| 3) Commerce Committee | | Walsh | Hamon |

## SUMMARY ANALYSIS

Energy recovery from waste is the conversion of non-recyclable waste materials into useable heat, electricity, or fuel. Municipal solid waste (MSW), otherwise known as trash or garbage, can be used to produce energy at Waste-to-Energy (WTE) plants and landfills. For over 30 years, WTE has been a part of Florida's solid waste management program. Florida has the largest MSW burn capacity in the country.

Utilities are required to purchase power, at the utility's full avoided cost, from "qualifying facilities" (QF) which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities. In Florida, investor-owned utilities (IOUs) must annually establish and file with the Public Service Commission (PSC) a standard offer contract with terms, conditions, and payments based on projected costs for each fossil-fueled generating unit type identified in the IOU's ten-year site plan. Payment terms and conditions for QFs are based on the projected cost to construct and operate the IOU's next planned generation unit. The standard offer contract provides a basis for developing negotiated contracts. "As-available" energy contracts are also an option for QFs, including municipal solid waste-to-energy (MSWE) facilities.

The bill creates the Municipal Solid Waste-to-Energy Program (program) within the Department of Agriculture and Consumer Services (DACS). The program provides financial assistance grants to MSWE facilities that experience a reduction in capacity payments upon renewal or amendment of an existing contract with an IOU. Under the bill, the financial assistance grants will provide MSWE facilities funding at a rate of two cents per kilowatt-hour of electricity purchased by an electric utility during the preceding state fiscal year, not to exceed the total of the capacity and energy payment the MSWE facility received during the last year of its prior power purchase agreement with the utility entered into before January 1, 2022, and the total of the capacity and energy payment the MSWE facility received under a new or amended power purchase agreement during the preceding fiscal year.

The program also provides incentive grants, which will provide facilities with matching funds on a dollar-for-dollar basis to assist with planning and design for constructing, upgrading, or expanding MSWE facilities, including necessary legal or administrative expenses. The bill authorizes DACS to adopt rules to implement the program.

The bill provides a $100 million appropriation in recurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year for the new program. The bill also appropriates $149,832 in recurring funds and $9,984 in nonrecurring funds from the General Revenue Fund and two full-time equivalent positions to DACS for the 2022-2023 fiscal year to assist with the program. The bill may result in a positive fiscal impact to local revenues if publicly-owned MSWE facilities qualify for the program.

The bill provides an effective date of July 1, 2022.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Municipal Solid Waste-to-Energy

Energy recovery from waste is the conversion of non-recyclable waste materials into useable heat, electricity, or fuel. This process is often called waste-to-energy (WTE), and the conversion may use a few different methods, including combustion, gasification, pyrolization, anaerobic digestion, and landfill gas recovery.[1]

Municipal solid waste (MSW), otherwise known as trash or garbage, can be used to produce energy at WTE plants and landfills.[2] At this type of facility, MSW is typically unloaded from collection trucks and placed in storage, then an overhead crane sorts the waste and lifts it into a combustion chamber to be burned. The heat released from burning converts water to steam in a boiler that is used to generate electricity.[3,4] MSW may contain:

- Biomass or biogenic (plant or animal products) materials such as paper, cardboard, food waste, grass clippings, leaves, wood, and leather products;
- Nonbiomass combustible materials such as plastics and other synthetic materials made from petroleum; and
- Noncombustible materials such as glass and metals.[5]

In 2018, about 12 percent of the 292 million tons of MSW produced in the U.S. was burned in WTE plants.[6] The remaining MSW was managed as follows:

- 50 percent was landfilled;
- 23.6 percent was recycled;
- 8.5 percent was composted; and
- 6.1 percent is listed as "other."[7]

In 2020, 65 U.S. power plants generated around 13.5 billion kilowatt-hours of electricity from 25 million tons of MSW. In addition to producing electricity, WTE is a waste management option. Utilizing WTE methods reduces the amount of material otherwise buried in landfills by about 87 percent. A WTE plant can reduce 2,000 pounds of MSW down to around 300 to 600 pounds of ash.[8]

Energy recovery from waste is encouraged by the U.S. Environmental Protection Agency and is recognized as a renewable energy source. WTE facilities produce relatively clean, renewable energy through the combustion of municipal solid waste in specially designed power plants equipped with pollution control equipment to clean emissions.[9]

*Municipal Solid Waste-to-Energy in Florida*

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[1] U.S. Environmental Protection Agency, *Energy Recovery from the Combustion of Municipal Solid Waste (MSW)*, https://www.epa.gov/smm/energy-recovery-combustion-municipal-solid-waste-msw (last visited Feb. 9, 2022).
[2] U.S. Energy Information Admin., *Biomass explained, Waste-to-energy (Municipal Solid Waste), Basics*, https://www.eia.gov/energyexplained/biomass/waste-to-energy.php (last visited Feb. 9, 2022).
[3] U.S. Energy Information Admin., *Biomass explained, Waste-to-energy (Municipal Solid Waste), In Depth, How waste-to-energy plants work*, https://www.eia.gov/energyexplained/biomass/waste-to-energy-in-depth.php (last visited Feb. 9, 2022).
[4] U.S. Environmental Protection Agency, *supra* note 1.
[5] U.S. Energy Information Admin., *supra* note 2.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] U.S. Environmental Protection Agency, *supra* note 1.

For over 30 years, WTE has been a part of Florida's solid waste management program.[10] In the 1993 revisions to the 1988 Solid Waste Management Act, the Legislature recognized the need to use an integrated approach to municipal solid waste management by using waste reduction, recycling, WTE facilities, and landfills.[11]

Current law defines the term "waste-to-energy facility" as a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. Under current law, the term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement.[12,13]

Florida has the largest MSW burn capacity of any state in the country. The state went from having one small WTE plant in 1982 to twelve operating WTE facilities as of 2017.[14] The following counties have at least one facility:

- Bay
- Broward
- Miami-Dade
- Hillsborough
- Lake
- Palm Beach
- Pasco
- Pinellas[15]

Florida Public Service Commission and Regulation of Investor-Owned Electric Utilities

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[16] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[17]

The PSC regulates the rates and services of investor-owned electric utilities (IOUs). There are four IOUs in Florida: Florida Power & Light Company (FPL),[18] Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation.[19] Together, these four IOUs serve over 8.1 million customers in Florida.[20] IOU rates and revenues are regulated by the PSC.[21] The IOUs must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and

[10] *See* s. 403.7061(1), F.S.
[11] *Id*.
[12] S. 403.1061, F.S.
[13] The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels. *Id*.
[14] Florida Department of Environmental Protection, *Waste-to-Energy*, https://floridadep.gov/waste/permitting-compliance-assistance/content/waste-energy (last visited Feb. 9, 2022).
[15] Florida Department of Environmental Protection, *Florida Waste-to-Energy Facilities*, https://floridadep.gov/sites/default/files/WTE_Contacts-2016.pdf (last visited Feb. 9, 2022).
[16] S. 350.001, F.S.
[17] Florida Public Service Commission, http://www.psc.state.fl.us/ (last visited Feb. 10, 2022).
[18] FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022, for ratemaking purposes.
[19] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Feb. 10, 2022).
[20] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2021), p, 4, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202021.pdf (last visited Feb. 10, 2022).
[21] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 19.

adjust customer rates if a company appears to be overearning.[22] IOUs must provide sufficient and adequate service to customers.[23] To fulfill that obligation, utilities monitor customer usage patterns in order to plan for future energy needs.

Required IOU Purchases from Qualifying Facilities

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),[24] which required promotion of energy efficiency and use of renewables. PURPA requires utilities to purchase power, at the utility's full avoided cost, from "qualifying facilities" (QF)[25] which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.[26] These facilities can include WTE facilities. PURPA directed the Federal Energy Regulatory Commission to implement this requirement, which in turn directed the states to do the same. In response, the Florida Legislature directed utilities to purchase power from cogenerators and small power producers.[27]

An IOU's full avoided cost is the incremental cost of electric energy or capacity[28] which, but for the purchase from cogenerators or small power producers, the IOU would have to generate itself or purchase from another source.[29] Full avoided cost is based upon either the utility's cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the wholesale market.[30]

*Power Purchase Agreements*

IOUs must annually establish and file with the PSC a standard offer contract with terms, conditions, and payments based on projected costs for each fossil-fueled generating unit type identified in the IOU's ten-year site plan. Payment terms and conditions for QFs are based on the projected cost to construct and operate the IOU's next planned generation unit. Essentially, the next planned unit becomes an avoided unit and the basis for the avoided costs.[31]

The standard offer contract provides a basis for developing negotiated contracts.[32] Rule 25-17.240, F.A.C., encourages IOUs and generating facilities to negotiate contracts for firm capacity and energy to provide fuel diversity, fuel price stability, and energy security. The PSC addresses petitions by IOUs for approval of cost recovery of negotiated contracts between the IOU and the QFs. The PSC's review considers various matters including whether the contract is at or below the IOU's avoided cost.[33]

*Payments to Qualified Facilities*

"As-available" energy contracts are an option for QFs, including municipal solid waste-to-energy (MSWE) facilities. These contracts are not subject to the PSC's approval but must be filed with the PSC

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[22] Florida Public Service Commission, *Florida PSC 2020 Annual Report*, p. 6, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Feb. 10, 2022).
[23] S. 366.03, F.S.
[24] 16 U.S.C. s.2601 et seq.
[25] *See* Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Feb. 10, 2022).
[26] *Id.*
[27] S. 366.051, F.S.
[28] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions. *See* U.S. Energy Information Administration, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Feb. 10, 2022).
[29] S. 366.051, F.S.
[30] Florida Public Service Commission, *States' Electric Restructuring Activities Update: Wholesale Sales*, http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Feb. 10, 2022).
[31] Florida Public Service Commission, Agency Analysis of 2022 House Bill 1419, p. 1 (Jan. 20, 2022).
[32] *Id.*
[33] *Id.*

within ten working days of being signed.[34] As-available energy is energy produced and sold on an hour-by-hour basis for which contractual commitments regarding the quantity and time of delivery are not required.[35] As-available energy is purchased at a rate equal to the utility's hourly incremental system fuel cost, which reflects the highest fuel cost of generation each hour.[36]

According to the PSC, the following WTE facilities receive as-available energy payments from FPL:

- Broward County Resource Recovery – South AA QF
- Brevard County
- Miami Dade Resource Recovery
- Lee County Solid Waste[37]

A QF is eligible for capacity and energy payments under a firm contract if the QF can meet certain contractual provisions as to the quantity, time, and reliability of the delivery of electricity.[38] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions.[39]

To promote alternative and renewable energy generation, the PSC requires IOUs to offer multiple capacity payment options, including early payments or levelized payments. The different payment options allow QFs flexibility to best meet their financial needs. If an early capacity payment option is selected, then the QF will begin receiving capacity payments earlier than the in-service date of the avoided unit and payments will generally be lower in the later years of the contract.[40]

According to the PSC, the following six WTE facilities are operating under active firm contracts with their host IOU:

- Pinellas County Resource Recovery, with Duke, ending December 2024
- Pasco County Resource Recovery, with Duke, ending December 2024
- Broward County Resource Recovery - South QF, with FPL, ending December 2026
- Palm Beach County Solid Waste Authority 1, with FPL, ending March 2034
- Palm Beach County Solid Waste Authority 2, with FPL, ending March 2034
- Bay County/Engen LLC, with FPL/Gulf, ending July 2023[41]

Office of Energy in the Department of Agriculture and Consumer Services

The Office of Energy (office) within DACS is the legislatively designated state energy policy and program development office in Florida. The office evaluates energy-related studies, analyses, and stakeholder input in order to make recommendations regarding energy policies and programs to the Governor and Legislature. The office uses available state and federal funding to develop and manage energy efficiency, renewable energy, and energy education programs throughout the state.[42]

**Effect of the Bill**

The bill provides findings that:

- It is in the public interest to promote the development of renewable energy resources in Florida;

[34] R. 25-17.0825(1)(b), F.A.C.; Florida Public Service Commission, *supra* note 31, p. 2.
[35] R. 25-17.0825, F.A.C.
[36] Florida Public Service Commission, *supra* note 31, p. 2.
[37] *Id.*
[38] *Id*. at 1.
[39] *See* U.S. Energy Information Administration, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Feb. 11, 2022).
[40] Florida Public Service Commission, *supra* note 31, p. 1.
[41] *Id*. at 2.
[42] Florida Department of Agriculture and Consumer Services, *Office of* Energy, https://www.fdacs.gov/Divisions-Offices/Energy (last visited Feb. 18, 2022).

- MSWE facilities[43] using biomass as fuel or an energy source are deemed to be producing renewable energy;
- MSWE facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent;
- Recognize the benefits that MSWE facilities contribute to Florida and its local communities; and
- The Legislature intends to incentivize the production and sale of energy from MSWE facilities through grant programs.

The bill creates the Municipal Solid Waste-to-Energy Program (program) within the Department of Agriculture and Consumer Services (DACS). The purpose of the program is to provide financial assistance grants and incentive grants to MSWE facilities. The bill provides a $100 million appropriation in recurring funds from the General Revenue Fund to DACS to administer the program. The bill also appropriates $149,832 in recurring funds and $9,984 in nonrecurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year. The bill authorizes two full-time equivalent positions with an associated salary rate of 80,540 for the purpose of implementing the bill.

The bill provides that in order to qualify for the program, the owner of an MSWE must have previously entered into a power purchase agreement with an electric utility before January 1, 2022, that included capacity and energy payments and must have entered into a new or amended power purchase agreement that either no longer includes capacity payments or includes capacity and energy payments in an amount less than the total of the capacity and energy payments the MSWE facility received under its prior power purchase agreement with the utility. The facility owner must submit an application to DACS that includes the MSWE facility's name, the name of the utility purchasing the electric power from the MSWE facility, the total capacity and energy payment the MSWE facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the amount of electric power delivered to and the total amount paid for such power by an electric utility pursuant to a new or amended power purchase agreement during the preceding state fiscal year.

Under the bill, the financial assistance grants will provide MSWE facilities funding at a rate of two cents per kilowatt-hour of electricity purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the total of the capacity and energy payment the MSWE facility received during the last year of its power purchase agreement with the utility entered into before January 1, 2022, and the total of the capacity and energy payment the MSWE facility received under a new or amended power purchase agreement during the preceding fiscal year. If funds are insufficient to cover every qualifying kilowatt-hour from all qualifying applicants, DACS must prorate the available funds on an equitable basis.

The bill requires DACS to establish a process in coordination with the PSC to verify eligibility and the amount of energy purchased from the facility by an electric utility.

Under the bill, the incentive grants will provide facilities with matching funds on a dollar-for-dollar basis to assist with planning and design for constructing, upgrading, or expanding MSWE facilities, including necessary legal or administrative expenses.

The bill provides that to qualify for the incentive grants, a facility owner must apply to DACS and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061, F.S., which establishes the requirements for review of new WTE facility capacity by the Department of Environmental Protection (DEP).

[43] The bill defines "municipal solid waste-to-energy facility" as a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term also does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

The bill requires DEP to assist DACS with determining eligibility and with establishing requirements to ensure long-term and efficient operation and maintenance of such facilities.

The bill requires DACS to perform adequate overview of applications and awards, including technical review, regular inspections, disbursement approvals, and auditing. The bill provides that funds awarded under the incentive grant program may not be used to promote, establish, or convert a residential collection system that does not provide for the separate collection of residential solid waste from recovered materials[44] as defined by current law. The bill further provides that DACS must terminate or require repayment of incentive grant funds if it determines that the program requirements are not being met.

The bill states that any funds appropriated to the program must first be used for the financial assistance grants and any remaining funds in a fiscal year may be used for the incentive grants.

The bill requires DACS to adopt rules to implement and administer the program. The rules must:

- Establish an application process for both grant types;
- Include application deadlines; and
- Establish supporting documentation to be provided to DACS.

The bill requires DACS to consult with the PSC in developing rules for the financial assistance grants.

The bill provides that any funds allocated for the purpose of the bill which are not disbursed by June 30th of the fiscal year in which the funds are allocated may be carried forward for up to five years after the effective date of the original appropriation.

B. SECTION DIRECTORY:

**Section 1:** Creates s. 377.814, F.S., which establishes the Municipal Solid Waste-to-Energy Program.

**Section 2:** Appropriates recurring funds from the General Revenue Fund.

**Section 3:** Appropriates recurring and nonrecurring funds from the General Revenue Fund.

**Section 4:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides a $100 million appropriation in recurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year. The bill also appropriates $149,832 in recurring funds and

   $9,984 in nonrecurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year. The bill authorizes two full-time equivalent positions with an associated salary rate of 80,540 for the purpose of implementing the bill.

[44] The term "recovered materials" means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste. S. 403.703(28), F.S.

The bill may have an insignificant negative fiscal impact on DEP because it requires DEP to assist DACS with determining eligibility and with establishing requirements to ensure long-term and efficient operation and maintenance of WTE facilities. These costs can be absorbed within existing resources.

The bill may have an insignificant negative fiscal impact on the PSC because it requires the PSC to assist DACS with verifying eligibility and the amount of energy purchased from the facility by an electric utility for financial assistance grants. These costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may result in a positive fiscal impact to publicly-owned MSWE facilities that qualify for the program by providing grants to offset capacity payments and to assist with certain planning and design expenses.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a positive fiscal impact to government affiliate-owned MSWE facilities that qualify for the program by providing grants to offset capacity payments and to assist with certain planning and design expenses.

D. FISCAL COMMENTS:

None.

## 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 revenues 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 DACS, in consultation with the PSC and DEP, to adopt rules to implement and administer the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 15, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies eligibility, application requirements, and fund distribution guidelines for the financial assistance grant program.
- Appropriates recurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services (DACS) for the 2022-2023 fiscal year as follows:
    - $100 million to fund the grant program.
    - $149,832 to provide for the staff necessary to administer the program.
- Appropriates non-recurring funds from the General Revenue Fund to DACS for administration expenses in the amount of $9,984.
- Provides that allocated funds which are not disbursed by the end of the fiscal year may be carried forward for up to five years.

On February 22, 2022, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides that funds awarded under the incentive grant program may not be used to promote, establish, or convert a residential collection system that does not provide for the separate collection of residential solid waste from recovered materials as defined in s. 403.703, F.S.

This analysis is drafted to the committee substitute as approved by the Appropriations Committee.

A bill to be entitled

An act relating to financial assistance for municipal solid waste-to-energy facilities; creating s. 377.814, F.S.; creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; defining terms; requiring the department, subject to appropriation, to provide annual financial assistance grants to municipal solid waste-to-energy facilities that meet certain requirements; requiring the department to distribute funds to qualifying applicants based on certain criteria; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility; requiring the department, subject to appropriation, to provide incentive grants to municipal solid waste-to-energy facilities to assist with certain costs; specifying requirements for applying for the funding; requiring the Department of Environmental Protection to provide assistance in determining grant eligibility and establishing requirements; requiring the department to perform grant overview; prohibiting the use of funds for specified purposes; establishing priority for funding

for the grants; authorizing the balance of certain unexpended funds to be carried forward for a specified number of years; requiring the Department of Agriculture and Consumer Services to adopt rules; providing appropriations and authorizing positions; providing an effective date.

WHEREAS, as provided in s. 366.91(1), Florida Statutes, the Legislature has determined that it is in the public interest to promote the development of renewable energy resources in this state, and

WHEREAS, under s. 366.91, Florida Statutes, municipal solid waste-to-energy facilities that use biomass as a fuel or energy source are deemed to be producing renewable energy, and

WHEREAS, municipal solid waste-to-energy facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent, and

WHEREAS, the Legislature recognizes the benefits that municipal solid waste-to-energy facilities contribute to the state and its local communities, and

WHEREAS, the Legislature intends to incentivize the production and sale of energy from municipal solid waste-to-energy facilities through grant programs, NOW, THEREFORE,

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

Section 1. Section 377.814, Florida Statutes, is created to read:

377.814 Municipal Solid Waste-to-Energy Program.—

(1) CREATION AND PURPOSE OF THE PROGRAM.—The Municipal Solid Waste-to-Energy Program is created within the department. The purpose of the program is to provide financial assistance grants and incentive grants to municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Municipal solid waste-to-energy facility" means a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood,

methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

(3) FINANCIAL ASSISTANCE GRANT PROGRAM.—The department, subject to appropriation, shall provide annual financial assistance grants to municipal solid waste-to-energy facilities that entered into a power purchase agreement with an electric utility before January 1, 2022, which included capacity and energy payments, if the owner of the municipal solid waste-to-energy facility has entered into a new or amended power purchase agreement that no longer includes capacity payments or that includes capacity and energy payments in an amount less than the total of the capacity and energy payments the municipal solid waste-to-energy facility received under the power purchase agreement entered into before January 1, 2022.

(a) To apply for an annual financial assistance grant, the owner of a municipal solid waste-to-energy facility must submit an application to the department. The application must include the name of the applicant's municipal solid waste-to-energy facility, the name of the utility purchasing the electric power from the municipal solid waste-to-energy facility, the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of a power purchase agreement entered into before January 1, 2022, and the amount of electric power delivered to the utility and the total amount

paid by the utility for such electric power pursuant to a new or amended power purchase agreement during the preceding state fiscal year.

(b) The department shall distribute funds, subject to appropriation, to each qualifying applicant at a rate of 2 cents per kilowatt-hour of electric power purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the total of the capacity and energy payment the municipal solid waste-to-energy facility received under a new or amended power purchase agreement during the preceding state fiscal year. To the extent that funds are not available to provide financial assistance to each qualifying applicant for every qualifying kilowatt-hour of electric power purchased, the department shall prorate the funds on an equitable basis.

(c) The department shall establish a process to verify the amount of electric power purchased from a municipal solid waste-to-energy facility by an electric utility during each preceding state fiscal year. The Public Service Commission shall provide assistance to the department to help verify the information provided pursuant to paragraph (a).

(4) INCENTIVE GRANT PROGRAM.—The department, subject to

appropriation, shall provide incentive grants to municipal solid waste-to-energy facilities to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses.

(a) To qualify for an incentive grant, the owner of a municipal solid waste-to-energy facility must apply to the department for funding; provide matching funds on a dollar-for-dollar basis; and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061.

(b) The Department of Environmental Protection shall provide assistance to the department in determining the eligibility of grant applications and establishing requirements to ensure the long-term and efficient operation and maintenance of facilities constructed or expanded under an incentive grant.

(c) The department shall perform adequate overview of each grant application and grant award, including technical review, regular inspections, disbursement approvals, and auditing, to implement this section.

(d) Funds awarded under the incentive grant program may not be used to promote, establish, or convert a residential collection system that does not provide for the separate collection of residential solid waste from recovered materials as defined in s. 403.703.

(e) The department shall require the termination or repayment of incentive grant funds if the department determines that program requirements are not being met.

(5) FUNDING.—Funds appropriated for the Municipal Solid Waste-to-Energy Program must first be used for financial assistance grants. Any funds remaining in a state fiscal year after disbursement to all qualifying applicants may be used to fund the incentive grant program.

(6) RULES.—The department shall adopt rules to implement and administer this section, including establishing grant application processes for financial assistance grants and incentive grants. The rules shall include application deadlines and establish the supporting documentation necessary to be provided to the department. In adopting rules relating to the financial assistance grant program, the department shall consult the Public Service Commission. In adopting rules for the incentive grant program, the department shall consult the Department of Environmental Protection.

Section 2. (1) For the 2022-2023 fiscal year, the sum of $100 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Municipal Solid Waste-to-Energy Program, as provided in s. 377.814, Florida Statutes.

(2) Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, funds allocated for

the purpose of this section which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 5 years after the effective date of the original appropriation.

Section 3. For the 2022-2023 fiscal year, the sums of $149,832 in recurring funds and $9,984 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services, and two full-time equivalent positions with associated salary rate of 80,540 are authorized, for the purpose of implementing this act.

Section 4. This act shall take effect July 1, 2022.

**PCS for CS/CS/HB 577**

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/CS/HB 577 Tenant Safety
**SPONSOR(S):** Commerce Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Commerce Committee | | Wright | Hamon |

## SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" (Act) governs the relationship between landlords and tenants under a residential rental agreement. The Act provides landlords with certain rights of entry to the dwelling unit. For example, the landlord may enter a dwelling unit for purposes of repair to the premises, but the landlord must first give "reasonable notice" of 12 hours to a tenant beforehand.

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment. An investigation by the Orange County Sheriff's Office indicated that Marcano was taken from her apartment by a maintenance worker at the same apartment complex, who used a master key fob to enter her apartment.

The bill, "Miya's Law":

- Increases the time period that a landlord must give to a tenant prior to entering the dwelling unit from 12 hour to **24 hours**, unless the tenant consents to a shorter time period.
- Requires an operator of an apartment complex with **15 or more units** to:
  - Upon request, notify a tenant or prospective tenant in writing whether the operator requires any employees or contractors to undergo a **background screening**.
  - Upon request, provide a list to the tenant of every employee or contractor who has **access to a master key** or fob or individual unit keys, and post such a list in a conspicuous place on the apartment complex grounds or on the apartment's website.
  - Maintain a log accounting for all employees or contractors that have access to a master key or fob or individual unit keys.
  - Make such log accessible:
    - To law enforcement as needed in connection with the performance of their duties;
    - To a tenant; and
    - In discovery in a civil action related to an action involving a tenant or the apartment.
  - Maintain such log for one year.

The bill may have an indeterminate fiscal impact on state government and does not have an impact on local governments.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act" (Act), governs the relationship between landlords and tenants under a residential rental agreement.[1]

The Act does not apply to:[2]

- Residency or detention in a facility when it is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.
- Transient occupancy in a public lodging establishment or a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.

Any right or duty declared in the Act is enforceable by civil action. A right or duty enforced by civil action under the Act does not preclude prosecution for a criminal offense related to the lease or leased property. If either the landlord or the tenant fails to comply with the requirements of the rental agreement or the Act, the aggrieved party may recover the damages caused by the noncompliance.[3] Under certain circumstances, either party may take action to terminate the lease.[4]

Covenant of Quiet Enjoyment

Generally, a tenant is entitled to the right of private, peaceful possession of the dwelling, which includes limited access to the dwelling unit by the landlord.[5] In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,[6] and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.[7] Thus, a valid ordinary lease of real estate raises an implied covenant of quiet and peaceful enjoyment of the leased premises exercisable against the landlord.[8]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[9]

Landlord's Access to the Dwelling Unit

[1] S. 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.
[2] S. 83.42, F.S.
[3] S. 83.55, F.S.
[4] S. 83.56, F.S.
[5] The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, https://www.floridabar.org/public/consumer/tip014/ (last visited Feb. 26, 2022).
[6] Fla. Jur. 2d Landlord and Tenant § 90. *Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co., Inc.*, 923 F.2d 810 (11th Cir. 1991); *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251 (Fla. 2d DCA 2011); *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).
[7] Fla. Jur. 2d Landlord and Tenant § 90; *Hankins*, 138 So. 494.
[8] Fla. Jur. 2d Landlord and Tenant § 90; *McClosky v. Martin*, 56 So. 2d 916 (Fla. 1951); *Hankins*, 138 So. 494.
[9] S. 83.51(1), F.S.

The landlord is generally restricted to accessing the dwelling unit under certain scenarios. However, they may enter the dwelling unit at any time for the protection or preservation of the premises.[10]

The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is between 7:30 a.m. and 8:00 p.m.[11]

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.[12] The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:[13]

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments; but if the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The landlord may not abuse the right of access or use it to harass the tenant.[14]

Transient and Non-transient Apartments

"Public lodging establishments" includes transient and nontransient public lodging establishments.[15] The principal difference between a transient and nontransient public lodging establishment is how frequently the establishment is rented in a calendar year and the duration of the rental.

A "transient public lodging establishment" is:

> Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[16]

A "nontransient public lodging establishment" is:

> Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of **at least 30 days** or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.[17]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[18]

A **nontransient apartment** is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants. A **transient apartment** is a building or complex of

[10] S. 83.53(2), F.S.
[11] *Id*.
[12] S. 83.53(1), F.S.
[13] S. 83.53(2), F.S.
[14] S. 83.53(3), F.S.
[15] S. 509.013(4)(a), F.S.
[16] S. 509.013(4)(a)1., F.S
[17] S. 509.013(4)(a)2., F.S.
[18] S. 509.242(1), F.S.

buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.[19]

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The division licenses certain transient and non-transient apartments in the state with 5 or more units.[20]

DBPR's regulation of public lodging establishments includes:
- Sanitation standards;
- Inspections; and
- Personnel training.[21]

Both transient and non-transient apartments are inspected by the division at least annually. For purposes of performing required inspections and the enforcement, the division has the right of entry and access to public lodging establishments at any reasonable time.[22]

If a public lodging establishment, including an apartment, operates in violation of ch. 509, F.S., or division rules, the division may impose the following disciplinary actions:[23]
- Fines not to exceed $1,000 per offense; and
- The suspension, revocation, or refusal of a license.

Safety Regulations

Section 509.211, F.S., provides safety regulations of public lodging establishments. Current law requires every bedroom or apartment in a public lodging establishment to be equipped with an approved locking device on each door opening to the outside, to an adjoining room or apartment, or to a hallway.[24] Every public lodging establishment that is three or more stories in height must have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired.[25]

Employee Background Screenings

Generally, criminal background screenings used for employment are generated by searching various databases for criminal history, including misdemeanor and felony convictions and pending cases.[26] There is no requirement in Florida law that apartments must perform a background check on employees or potential employees nor does it requires landlords or apartments to exclude potential employees due to their criminal history.

The law also does not prevent an apartment from performing a criminal background check on potential employees on its own accord, but the employer must follow federal standards under Title VII of the Civil Rights Act of 1964, as it relates to employment discrimination, and the Fair Credit Reporting Act (FCRA) as it relates to requirements for how a background check is conducted and applied to employment.

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[19] *Id.*
[20] S. 509.013 (4) (b), F.S. Any non-transient apartment renting four units or less or any apartment building inspected by the United States Department of Housing and Urban Development (HUD) or other entity acting on its behalf that is designated primarily as housing for tenants at least 62 years of age is exempt from division licensure.
[21] S. 509.032 (2) (a), F.S.
[22] S. 509.032 (2) (b), F.S.
[23] S. 509.261(1), F.S.
[24] S. 509.211 (1) F.S.
[25] S. 509.211 (3) F.S.
[26] GoodHire, *Criminal Background Check For Employment*, https://www.goodhire.com/screening/criminal-background-check/ (last visited Feb. 26, 2022).

Florida law provides employers that conduct a background investigation with the legal presumption that they were not negligent in hiring. As long as the background check didn't uncover any information that reasonably demonstrates that the employee was unfit for the job or employment in general, the employer is entitled to a presumption that it did not act negligently.[27]

*Third Party Background Screening*

There are hundreds of companies engaged in employment and tenant background screening across the United States.[28] These companies are defined as "consumer reporting agencies" (CRAs), pursuant to the FCRA and are regulated by both the Federal Trade Commission and Consumer Financial Protection Bureau.[29] The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.[30] The FCRA governs the acts of CRAs, entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

Individuals can review the information a CRA has collected on them to ensure that it is accurate, and may dispute its accuracy—which triggers a CRA's and furnisher's duty to reinvestigate the information. Individuals may also request to review the information a CRA has in his or her file, the sources of the information, and the identity of those to whom the information was disclosed.

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.[31]

*Statutory Background Screenings*

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.[32] The state mandates background screenings for all state employees[33] and many professions that interact with vulnerable persons.[34]

Such criminal history check must include a Florida criminal history provided by the Florida Department of Law Enforcement (FDLE). The information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.[35]

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the FDLE.[36] A Level 1 background screening involves a name-based search of Florida records, including employment history, state and local criminal history check, and a search of the National Sex Offender Public Website.[37]

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[27] S. 768.096, F.S.; Lisa Guerin, *Florida Laws on Employer Use of Arrest and Conviction Records*, Nolo.com, https://www.nolo.com/legal-encyclopedia/florida-laws-employer-use-arrest-conviction-records.html (last visited Feb. 26, 2022).
[28] Professional Background Screening Association (PBSA), *About PBSA*, *available at* https://thepbsa.org/about-us/about-pbsa/ (last visited Feb. 26, 2022.)
[29] *Id.*
[30] Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, *available at* https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf (last visited Feb. 26, 2022). *See also*, Federal Trade Commission, *Fair Credit Reporting Act*, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Feb. 26, 2022).
[31] Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer's eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).
[32] Ss. 435.01-435.12, F.S.
[33] S. 110.1127, F.S.
[34] S. 435.02(6), F.S.
[35] S. 943.053(12), F.S.
[36] S. 435.03, F.S. A Level 1 criminal history record check is "a state-only name-based check." Florida Department of Law Enforcement (FDLE), *Definitions*, https://www.fdle.state.fl.us/Background-Checks/VECHS-FAQs/Definitions.aspx (last visited Feb. 26, 2022).
[37] S. 435.03(1), F.S.

A Level 2 screening consists of a fingerprint-based search of the FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records.[38] A Level 1 screening and Level 2 screening have the same disqualifying offenses, including, but not limited to, domestic violence, sexual misconduct, murder, and other violent or sexually-based offenses.[39]

Miya Marcano

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment.[40]

Investigators for the Orange County Sheriff's Office said Marcano was taken from her apartment by Armando Caballero, who was a maintenance worker at the same apartment complex. It is alleged that he used a master key fob for the apartment complex to enter her apartment. Caballero was found dead by apparent suicide a few days after Marcano went missing.[41]

**Effect of Proposed Changes**

The sponsor has entitled the act "Miya's Law," in memory of Miya Marcano.

The bill increases the "reasonable notice" time period that a landlord must give to a tenant prior to entering the dwelling unit for purposes of repair of the premises, from 12 hours, to 24 hours.

Effective January 1, 2023, the bill requires each nontransient apartment or transient apartment building or complex with at least 15 individual units to:

- Upon request of the tenant or prospective tenant, provide the tenant or prospective tenant with information in writing indicating whether the operator requires any current employees or contractors to undergo a **background screening** and, if so, such notification must also state all of the following:
  - The positions of those required to undergo background screenings.
  - The type of background screening or criminal background screening the operator performed, and whether such background screenings include a search of the National Sex Offender Registry or other similar databases.
  - That the operator has discretion to make employment decisions, regardless of a current employee's or contractor's background screening results.
  - That state law does not disqualify any current employee or contractor from working at a nontransient apartment or transient apartment based on background screening results.
- Upon request of the tenant, provide a list to the tenant of every current employee or contractor who has **access to a master key** or fob or individual unit keys, which is updated as needed or at least quarterly, and such list must be posted in a conspicuous place on the grounds of the apartment building or complex or on the website of the apartment building or complex.
- Maintain a log that accounts for all employees or contractors that have access to a master key or fob or individual unit keys.
- Make such log accessible upon request:
  - To a law enforcement officer as needed in connection with the performance of the officer's official duties.
  - To a tenant.
  - During discovery in a civil action related to an action involving a tenant or the apartment.
- Maintain such log for at least 1 year.

[38] S. 435.04, F.S.
[39] Ss. 435.03(2) and 435.04(2), F.S.
[40] Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdgkgoi-story.html (last visited Feb. 26, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner*, People (Dec. 29, 2021) https://people.com/crime/texas-girls-abduction-inspired-amber-alert-26-years-later-case-remains-unsolved/ (last visited Feb. 26, 2022).
[41] Cristobal Reyes, *supra* note 15.

Upon request during the division's annual inspection of the premises, a licensee must provide the division with proof of compliance with these requirements during the inspection.

Except as otherwise provided, the bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

**Section 1:** Provides a short title.
**Section 2:** Amends s. 83.53, F.S., relating to landlord's access to a dwelling unit.
**Section 3:** Amends s. 509.211, F.S., relating to apartment safety regulations.
**Section 4:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR may see an increase in fines related to an operator that fails to provide certain information during an inspection.

2. Expenditures:

DBPR will likely be able to review master key logs without incurring additional expenses during annual inspections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to tenant safety; providing a short title; amending s. 83.53, F.S.; revising what constitutes reasonable notice for repairs of dwelling units; amending s. 509.211, F.S.; requiring the operator of certain apartments to provide certain information related to background screenings and issuance of keys; requiring the operator an apartment to maintain, and make accessible to certain persons and during certain discovery, a log that accounts for certain information for a specified time period; providing effective dates.

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

Section 1. This act may be cited as "Miya's Law."

Section 2. Subsection (2) of section 83.53, Florida Statutes, is amended to read:

83.53 Landlord's access to dwelling unit.—

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 24 ~~12~~ hours prior to the entry, and

reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

Section 3. Effective January 1, 2023, subsection (5) is added to section 509.211, Florida Statutes, to read:

509.211 Safety regulations.—

(5) An operator of a nontransient apartment or transient apartment building or complex consisting of at least 15 individual units must:

(a) Upon request of the tenant or prospective tenant, provide the tenant or prospective tenant with information in writing indicating whether the operator requires any current employees or contractors to undergo a background screening and, if so, such notification must also state all of the following:

1. The positions of those required to undergo background

screenings.

2. The type of background screening or criminal background screening the operator performed, and whether such background screenings include a search of the National Sex Offender Registry or other similar databases.

3. That the operator has discretion to make employment decisions, regardless of a current employee's or contractor's background screening results.

4. That state law does not disqualify any current employee or contractor from working at a nontransient apartment or transient apartment based on background screening results.

(b) Upon request of the tenant, provide a list to the tenant of every current employee or contractor who has access to a master key or fob or access to individual unit keys, which is updated as needed or at least quarterly, and such list must be posted in a conspicuous place on the grounds of the apartment building or complex or on the website of the apartment building or complex.

(c) Maintain a log that accounts for all employees or contractors that have access to a master key or fob or access to individual unit keys.

(d) Make the log in paragraph (c) accessible upon request:

1. To a law enforcement officer as needed in connection with the performance of the officer's official duties.

2. To a tenant.

3. During discovery in a civil action related to an action involving a tenant or the apartment building or complex.

(e) Maintain the log in paragraph (c) for at least 1 year.

Upon request, during the division's annual inspection of the premises, a licensee must provide the division with proof of compliance with this subsection.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

# PCS for HB 1543

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1543 Broadband Infrastructure
**SPONSOR(S):** Commerce Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Commerce Committee | | Keating | Hamon |

## SUMMARY ANALYSIS

In 2021, the Legislature took steps to improve broadband Internet access in unserved areas of the state. Among other things, the Legislature:

- Created the Broadband Opportunity Program (grant program) to be administered by the Office of Broadband (Office) within the Department of Economic Opportunity (DEO). Subject to appropriation, the program would award grants to applicants, regardless of technology, who seek to expand access to broadband service in unserved areas of the state. This grant program has not yet received funding.
- Provided for a promotional rate of $1 per wireline attachment per pole, per year for any new pole attachment necessary to make broadband service available to an unserved or underserved end user within a municipal electric utility service territory.
- Appropriated $1.5 million to DEO to develop geographic information system maps of broadband service availability, including transmission speeds. These maps continue to be developed and updated.

The Office is currently developing a strategic plan for increasing the availability and use of broadband service in the state. Florida law requires this plan to be completed by June 30, 2022.

The bill authorizes the Office to reimburse eligible applicants for certain pole replacement costs incurred in the installation or deployment of infrastructure to support the provision of broadband Internet service to customers in an unserved area. The bill identifies the types of costs eligible, and establishes conditions, for reimbursement. Any entity eligible to apply for funding under the grant program created in 2021 is eligible to apply for reimbursement. However, an entity may not receive reimbursement funds if it has been awarded or has applied for funds under the grant program to deploy broadband Internet service to the same area.

The bill requires that applications for reimbursement of pole replacement costs must provide information sufficient to establish the actual amount of the costs incurred and eligible for reimbursement and such other information as required by the Office. Applications must be submitted in a form specified by the Office.

The bill requires the Office, beginning January 1, 2023, and each year thereafter, to 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 reimbursement applications received during the previous fiscal year and other specified information, including reimbursements amounts awarded.

The bill requires DEO to adopt implementing rules, which may specify maximum annual reimbursement amounts per applicant and maximum reimbursement amounts per eligible pole replacement

The bill takes effect on July 1, 2022.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present 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 disproportionally lack access to broadband Internet service, which puts their children at risk of falling behind.[6]

Federal Broadband Initiatives

*FCC Rural Digital Opportunity Fund*

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.[8]

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.[9] Using this more precise data, the second phase of FCC grants will make

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[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 Feb. 1, 2022).

[2] FCC, *2021 Broadband Deployment Report* at 63 (Jan. 19, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Feb. 1, 2022). 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://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf (last visited Feb. 1, 2022).

[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. 1, 2022).

[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. 1, 2022).

[7] FCC, *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. 1, 2022).

[8] FCC, *Auction 904 Winning Bidders*, https://www.fcc.gov/document/auction-904-winning-bidders (last visited Feb. 1, 2022).

[9] *See*, FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 7 at 3. 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.

available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[10] Grants from both phases of the Fund are provided directly to service providers.

*Department of Commerce Coronavirus Capital Projects Fund*

The 2021 American Rescue Plan[11] allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[12] Each state is eligible for a fixed amount of $100 million plus an additional allocation based on the state's population, the proportion of its population that lives in rural areas, and the proportion of individuals who receive a household income below 150 percent of the poverty line.[13]

Eligible states must have applied by December 27, 2021, and submit a grant plan by September 24, 2022.[14] Capital Projects Fund recipients may pass the funds on to subrecipients, such as other levels of government, non-profits, or private entities. Florida's allocation of these funds is $366 million,[15] for which Florida's Department of Economic Opportunity (DEO) timely applied.

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream.[16] Projects that may be eligible on a case-by-case review include investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[17]

*USDA 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.[18] 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.[19]

*Additional Federal Broadband Funding and Initiatives*

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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. Congress allocated $65 million to the FCC to achieve this mapping project in December 2020.

[10] *Id*. at 4.

[11] Pub. L. 117-2 (117th Congress) (H.R. 1319).

[12] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 1, 2022).

[13] U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations Methodology for States, Territories, and Freely Associated States* (Aug. 2021), https://home.treasury.gov/system/files/136/Allocations-Methodology-States-Territories-Freely-Associated-States.pdf (last visited Feb. 1, 2022).

[14] *Id*. *See also*, U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States*, 1, 14 (Sept. 2021), https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 1, 2022).

[15] U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations for States, District of Columbia, and Puerto Rico*, https://home.treasury.gov/system/files/136/Allocations-States.pdf (last visited Feb. 1, 2022).

[16] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States, supra* note 14 at 3.

[17] *Id*. at 7.

[18] USDA, *Telecom Programs, available at* https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Feb. 1, 2022).

[19] *See* USDA, *ReConnect Loan and Grant Program, available at* https://www.usda.gov/reconnect#anchor1 (last visited Feb. 1, 2022).

Multiple federal assets have been made available to assist with the expansion of broadband, for example:[20]

- The U.S. Department of Housing and Urban Development[21] offers block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;[22] and
- The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[23]

The Consolidated Appropriations Act passed by Congress in December 2020[24] included the following funding to expand broadband Internet access for students, families, and unemployed workers:[25]

- $300 million for areas lacking broadband, especially rural areas;[26]
- $250 million for the FCC's telehealth program;[27]
- $285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;[28] and
- $1 billion in grants for tribal broadband programs.[29]

The American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, including $10 billion for the Coronavirus Capital Projects Fund (discussed above) 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.[30]

Additionally, the Infrastructure Investment and Jobs Act,[31] signed into law on November 15, 2021, contains $64 billion in funding for broadband expansion and access. The law:[32]

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[20] *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 Jan. 21, 2022).

[21] 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 Feb. 1, 2022).

[22] 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 Feb. 1, 2022).

[23] 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 Feb. 1, 2022).

[24] Consolidated Appropriations Act of 2020, H.R. 1865, 116th Cong. (2020).

[25] NCSL, *COVID-19 Economic Relief Bill: Broadband*, (Jan. 4, 2021) https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx#:~:text=Erlinda%20Doherty-,Overview,agency%20operations%20through%20September%202021. (last visited Feb. 1, 2022).

[26] *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 Feb. 1, 2022). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at 25/3Mbps or higher.

[27] FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), *available at* https://www.fcc.gov/covid-19-telehealth-program (last visited Feb. 1, 2022).

[28] *See generally*, NTIA, *Minority Broadband Initiative*, *available at* https://www.ntia.doc.gov/category/minority-broadband-initiative (last visited Feb. 1, 2022).

[29] *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 Feb. 1, 2022).

[30] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, https://home.treasury.gov/news/press-releases/jy0069 (last visited Feb. 1, 2022).

[31] Pub. L. No. 117-58 (117th Congress) (H.R. 3684). See also, Congressional Research Service, *The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F* (Nov. 16, 2021), https://crsreports.congress.gov/product/pdf/R/R46967 (last visited Feb. 1, 2022).

[32] NTIA, *Infrastructure Investment and Jobs Act Overview*, https://www.ntia.doc.gov/category/grants (last visited Feb. 1, 2022).

- Establishes the Broadband Equity, Access, and Development Program to be administered by the NTIA to states through matching grants;
- Allocates $2.75 billion to the Digital Equity Act Competitive Grant Programs administered by the Department of Commerce;
- Invests $2 billion in the Tribal Broadband Connectivity Program; and
- Funds the Middle Mile Grants program, administered by the NTIA, with $1 billion, especially to support construction, improvement, or acquisition of broadband infrastructure.

Florida Broadband Initiatives

*Florida's Office of Broadband*

In 2020, the Legislature designated the Department of Economic Opportunity as the lead state agency to facilitate the expansion of broadband Internet service in the state.[33] The Florida Office of Broadband (Office) was created within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.[34]

The Office must:[35]

- Create a strategic plan[36] for increasing the availability and use of broadband Internet service in the state, which must identify federal funding sources for the expansion of broadband and 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 to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved[37] 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; and
- Administer Florida's Broadband Opportunity Program.[38]

DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program to further the above goals.[39]

In 2021, the Legislature appropriated $1.5 million to DEO to develop geographic information system maps of broadband Internet service availability, including transmission speeds, consistent with the FCC's data collection program standards.[40] DEO must collaborate with broadband service providers, state agencies, local government entities, private businesses, educational institutions, and community organizations to develop these maps.[41] Through its website, DEO allows for public input concerning the speed, connectivity, and access to broadband Internet service in areas throughout the state to help

[33] Ch. 2002-26, Laws of Fla.
[34] *Id*.
[35] S. 288.9961(4), F.S.
[36] 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, and updated biennially thereafter. S. 288.9961(4)(a), F.S.
[37] Section 288.9961(2)(f), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream.
[38] The Broadband Opportunity Program is established in s. 288.9962, F.S., to award grants to those who seek to expand broadband Internet service to unserved areas of Florida.
[39] S. 288.9961(5), F.S.
[40] Ch. 2021-24, Laws of Fla.
[41] *Id*.

identify unserved and underserved areas. DEO's mapping efforts are not complete and will continue to be updated as more data is added.[42]

*Broadband Opportunity Program*

In 2021, the Legislature created the Broadband Opportunity Program[43] (grant program) to award grants to applicants who seek to expand access to broadband Internet service[44] in unserved[45] areas of the state, regardless of the technology to be used. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider. Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.

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

- Offer broadband Internet service to important community institutions, including, but not limited to, 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 private sources; or
- Demonstrate consistency with the Office's strategic plan.[46]

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, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project, and a single project may not be awarded a grant in excess of $5 million.

The Office has not yet received funding for the grant program.

*Promotional Pole Attachment Rates*

The term "pole attachment" refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. Utility poles are divided into various "spaces" for specific uses, and different vertical portions of the pole serve different functions.[47] Utility poles often accommodate equipment used to provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless, which benefits the public by minimizing "unnecessary and costly duplication of plant for all pole users."[48]

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[42] DEO, *Office of Broadband,* https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband (last visited Feb. 1, 2022).
[43] Section 288.9962, F.S.
[44] Section 288.9961(2)(a), F.S., defines the term "broadband Internet service" to mean 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.
[45] Section 288.9961(2)(g), F.S., defines the term "unserved" to mean a geographic area of the state without access to broadband Internet service.
[46] The Office is in the process of developing a strategic plan for submission by June 30, 2022, as required by section 288.9961(4)(a), F.S.
[47] *See* Florida Public Service Commission, What's on a Utility Pole? http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole (last visited Feb. 1, 2022).
[48] S. REP. NO. 95-580, at 13 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 109, 121.

When a new attacher, such as a broadband Internet service provider, seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment.[49]

Except for certain small cell wireless facilities, attachments of cable and telecommunications carrier facilities to utility poles owned by a municipal electric utility are not regulated at the state or federal level.

In 2021, the Legislature provided for a promotional rate of $1 per wireline attachment per pole, per year for any new attachment necessary to make broadband Internet service available to an unserved or underserved end user within a municipal electric utility service territory. This rate began July 1, 2021, and ends July 1, 2024.[50]

Under this promotional program, if a municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require the broadband provider to reimburse all reasonable costs attributable to the new attachment, minus the salvage value of the pole. A utility cannot require pole replacement to accommodate the broadband provider's pole attachment unless it is necessary to comply with applicable engineering and safety standards. Additionally, if the pole replacement is necessary to correct an existing violation, to bring the pole into compliance with changes in applicable standards, or because the pole is at the end of its useful life, the replacement cost may not be passed on to the broadband provider.[51]

**Effect of Proposed Changes**

The bill authorizes the Office to reimburse eligible applicants for certain pole replacement costs incurred in the installation or deployment of infrastructure to support the provision of broadband Internet service to customers in an unserved area. The same entities eligible to apply for funding under the grant program are eligible to apply for reimbursement of pole replacement costs.

The bill provides that, for purposes of reimbursement under the bill, pole replacement costs are the actual costs incurred by an eligible applicant:

- To remove and dispose of one or more existing poles that are owned by an electric utility as defined in s. 366.02(2), a communications services provider as defined in s. 366.02(5), a cable television operator, or a local exchange carrier and that are used in whole or in part to distribute electricity or provide wireline communications service;
- To purchase and install one or more replacement poles; and
- To transfer to such replacement pole or poles any facilities previously attached to the pole or poles that were removed and replaced.

The bill provides that these pole replacement costs are eligible for reimbursement if the costs are actually incurred by an eligible applicant to install or deploy infrastructure to support the provision of broadband Internet service to customers in an unserved area and:

- Federal or state funds have not been awarded to a broadband Internet service provider to install or deploy infrastructure to support the provision of broadband Internet service to customers in the same area; and
- The applicant has not applied for any other federal or state funds to install or deploy infrastructure to support the provision of broadband Internet service to customers in the same area.

[49] FCC-CIRC1808-03 at 4-5.
[50] S. 288.9963, F.S.
[51] *Id.*

Under these provisions of the bill, an entity may not receive reimbursement funds if it has been awarded or has applied for funds under the grant program to deploy broadband Internet service to the same area.

The bill requires that applications for reimbursement of pole replacement costs must provide information sufficient to establish the actual amount of the costs incurred and eligible for reimbursement and such other information as required by the Office. Applications must be submitted in a form specified by the Office.

The bill requires the Office, by January 1, 2023, and each year thereafter, to 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 reimbursement applications received during the previous fiscal year. For each application, the Office must provide:

- The reimbursement amounts requested;
- The reimbursement amounts awarded, if any; and
- To the extent available, the number of end-use locations, by customer class, to which broadband Internet service has been made available through pole replacements for which reimbursement was provided.

The bill requires DEO to adopt implementing rules, which may specify maximum annual reimbursement amounts per applicant and maximum reimbursement amounts per eligible pole replacement.

B. SECTION DIRECTORY:

**Section 1** Amends s. 288.9961, F.S., relating to promotion of broadband adoption and the Florida Office of Broadband.

**Section 2** Creates s. 288.9964, F.S., relating to reimbursement of certain pole replacement costs.

**Section 3** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill authorizes reimbursement of certain pole replacement costs, based on the availability of funds.

   DEO will incur expenses to conduct rulemaking as required by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None,

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reimbursement of eligible pole replacement costs, if funded, will lower the costs for broadband service providers to extend broadband service to unserved areas in the state. This may encourage the extension of service to such areas, providing greater access to broadband service in those areas.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEO to adopt rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to broadband infrastructure; amending s. 288.9961, F.S.; revising the duties of the Florida Office of Broadband to include administering reimbursements under newly created s. 288.9964, F.S.; creating s. 288.9964, F.S.; authorizing certain persons to apply to the office for reimbursement of certain pole replacement costs, subject to availability of funds; defining pole replacement costs; providing conditions under which costs are eligible for reimbursement; providing for applications; requiring certain information to be reported and published annually by the office; requiring the Department of Economic Opportunity to adopt implementing rules; providing an effective date.

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

Section 1. Paragraph (g) is added to subsection (4) of section 288.9961, Florida Statutes, to read:

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

(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 state. The office, in the performance of its duties, shall do all of the following:

(g) Administer reimbursements under s. 288.9964.

Section 2. Section 288.9964, Florida Statutes, is created to read:

288.9964 Reimbursement of certain pole replacement costs.—

(1) Any person eligible to apply for a grant award under s. 288.9962 may apply to the office for reimbursement of pole replacement costs as specified in this section, subject to availability of funds. If funds disbursed or awarded to the state by the federal government are used to provide reimbursement under this section, such use must comply with any requirements or conditions for use of the federal funds.

(2) For purposes of this section, pole replacement costs are the actual costs incurred by an eligible applicant:

(a) To remove and dispose of one or more existing poles that are owned by an electric utility as defined in s. 366.02(2), a communications services provider as defined in s. 366.02(5), a cable television operator, or a local exchange carrier and that are used in whole or in part to distribute electricity or provide wireline communications service;

(b) To purchase and install one or more replacement poles; and

(c) To transfer to such replacement pole or poles any

facilities previously attached to the pole or poles that were removed and replaced.

(3) Pole replacement costs are eligible for reimbursement under this section if:

(a) The costs are actually incurred by an eligible applicant to install or deploy infrastructure to support the provision of broadband Internet service to customers in an unserved area;

(b) Federal or state funds have not been awarded to a broadband Internet service provider to install or deploy infrastructure to support the provision of broadband Internet service to customers in the same area; and

(c) The applicant has not applied for any other federal or state funds to install or deploy infrastructure to support the provision of broadband Internet service to customers in the same area.

(4) Applications for reimbursement of pole replacement costs under this section shall provide information sufficient to establish the actual amount of the costs incurred and eligible for reimbursement and such other information as required by the office and shall be submitted in a form specified by the office.

(5) 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 list of all reimbursement applications

received during the previous fiscal year and for each application:

(a) The reimbursement amounts requested;

(b) The reimbursement amounts awarded, if any; and

(c) To the extent available, the number of end-use locations, by customer class, to which broadband Internet service has been made available through pole replacements supported by this section.

(6) The department shall adopt rules to implement this section. Such rules may specify maximum annual reimbursement amounts per applicant and maximum reimbursement amounts per eligible pole replacement.

Section 3. This act shall take effect July 1, 2022.

PCS for HB 1545

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1545 Trust Funds/Broadband Pole Replacement Trust Fund/DEO
**SPONSOR(S):** Commerce Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Commerce Committee | | Keating | Hamon |

## SUMMARY ANALYSIS

PCS for HB 1545 creates the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity (DEO) and provides that the trust fund is established as a depository for funds appropriated by the Legislature, federal funds received from the federal Coronavirus Capital Projects Fund, funds transferred by DEO, interest earnings, and grants, gifts, and other contributions made directly to the fund. In accordance with article III, section 19(f)(2) of the Florida Constitution, the trust fund terminates four years after the effective date of the bill. Before its scheduled termination, the trust fund must be reviewed pursuant to state law.

Article III, s. 19(f)(1) of the State Constitution specifies that a trust fund of the State of Florida or other public body may only be created or recreated by law in a separate bill. The bill creating or recreating the trust fund must pass with a three-fifths vote of the membership of each house of Legislature. Thus, this bill requires a three-fifths vote for passage.

This bill is linked to HB 1543, authorizing the Florida Office of Broadband (Office) within DEO to reimburse certain pole replacement costs incurred by certain entities to install or deploy infrastructure to support the provision of broadband Internet service to customers in unserved areas.

The bill has no fiscal impact on state or local governments.

This bill takes effect on the same date that HB 1543 takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Trust Funds

Article III, section 19(f) of the Florida Constitution requires that state trust funds may only be created by the Legislature if passed by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. Each trust fund must be created by general law that specifies at a minimum all of the following:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes the trust fund is established to meet;
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.[1]

State trust funds terminate no more than four years after the effective date of the act authorizing the initial creation of the trust fund.[2] The Legislature is required to review all state trust funds at least once every four years.[3] If the Legislature does not re-create a trust fund, it will be abolished four years after its initial creation pursuant to the Florida Constitution.[4]

Department of Commerce Coronavirus Capital Projects Fund

In 2021, the American Rescue Plan[5] allocated $10 billion to eligible governments to carry out capital projects to meet critical needs, with an emphasis on broadband infrastructure.[6] Each state is eligible for a fixed amount of $100 million plus an additional allocation based on the state's population, the proportion of its population that lives in rural areas, and the proportion of individuals who receive a household income below 150 percent of the poverty line.[7]

Eligible states must have applied by December 27, 2021, and submit a grant plan by September 24, 2022.[8] Capital Projects Fund recipients may pass the funds on to subrecipients, such as other levels of government, non-profits, or private entities. Florida's allocation of these funds is $366 million,[9] for which DEO timely applied.

Presumptively eligible projects under the program include the construction and deployment of broadband infrastructure that is designed to deliver service that reliably meets or exceeds symmetrical speeds of 100 Mbps, or if impracticable, speeds of 100 Mbps downstream and 20 Mbps upstream.[10]

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[1] S. 215.3207, F.S.
[2] Art III, s. 19. Fla. Const.
[3] Section 215.3208, F.S.
[4] Art III, s. 19. Fla. Const.
[5] Pub. L. 117-2 (117th Congress) (H.R. 1319).
[6] U.S. Dep't. of Treasury, *Capital Projects Fund*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited Feb. 1, 2022).
[7] U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations Methodology for States, Territories, and Freely Associated States* (Aug. 2021), https://home.treasury.gov/system/files/136/Allocations-Methodology-States-Territories-Freely-Associated-States.pdf (last visited Feb. 1, 2022).
[8] *Id*. *See also*, U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States,* 1, 14 (Sept. 2021), https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 1, 2022).
[9] U.S. Dep't. of Treasury, *Coronavirus Capital Projects Fund: Allocations for States, District of Columbia, and Puerto Rico,* https://home.treasury.gov/system/files/136/Allocations-States.pdf (last visited Feb. 1, 2022)
[10] U.S. Dep't. of Treasury, *Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States,* at 3. (Sept. 2021), https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf (last visited Feb. 1, 2022).

Projects that may be eligible on a case-by-case review include investments in capital assets, such as buildings, towers, digital devices and equipment, fiber-optic lines, and broadband networks.[11]

HB 1543

HB 1543, to which this bill is linked, authorizes the Office within DEO to reimburse, subject to funding, certain pole replacement costs incurred by certain entities to install or deploy infrastructure to support the provision of broadband Internet service to customers in unserved areas.

**Effect of the Bill**

This bill creates the Broadband Pole Replacement Trust Fund within DEO for the deposit of funds appropriated by the Legislature; federal funds received from the Coronavirus Capital Projects Fund for the purpose of providing reimbursement of certain pole replacement costs; funds transferred by DEO; interest earnings; and grants, gifts, and other contributions made directly to the fund.

The bill provides that funds from the trust fund will be used to provide reimbursements to eligible applicants pursuant to s. 288.9964, F.S., as provided in linked bill HB 1543, and for use by the Office in the administration of such reimbursements. The bill further provides that any balance that is in the trust fund at the end of any fiscal year shall be carried forward in the trust fund for these purposes.

Pursuant to the requirements of the Florida Constitution, the trust fund will terminate four years after its effective date, but must first be reviewed as provided in s. 215.3206(1) and (2), F.S.

The bill provides that it takes effect on the same date that HB 1543 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

**Section 1** Creates s. 288.9965, F.S., creating the Broadband Pole Replacement Trust Fund.

**Section 2** Provides a directive to the Division of Law Revision.

**Section 3** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[11] *Id*. at 7.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to impact county or municipal governments.

2. Other:

Trust Funds

Article III, s. 19(f), of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. State trust funds terminate no more than four years after the initial creation, unless they are re-created.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Broadband Pole Replacement Trust Fund; creating s. 288.9965, F.S.; creating the Broadband Pole Replacement Trust Fund within the Department of Economic Opportunity; providing the purpose of the trust fund; providing that moneys credited to the trust fund shall consist of certain funds; requiring that funds in the trust fund be used in a manner consistent with federal law; providing that the balance in the trust fund at the end of a fiscal year remains in the trust fund and is available for carrying out the purposes of the trust fund; providing for future legislative review and termination or re-creation of the trust fund; providing a directive to the Division of Law Revision;; providing an effective date.

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

Section 1. Section 288.9965, Florida Statutes, is created to read:

288.9965 Broadband Pole Replacement Trust Fund.—

(1) The Broadband Pole Replacement Trust Fund is created within the Department of Economic Opportunity for the purpose of providing reimbursements to eligible applicants pursuant to s.

288.9964 and for use by the Florida Office of Broadband in the administration of such reimbursements. Moneys credited to the trust fund shall consist of funds appropriated by the Legislature; federal funds received from the Coronavirus Capital Projects Fund for the purpose of providing reimbursements as specified in s. 288.9964; funds transferred by the department; interest earnings; and grants, gifts, and other contributions made directly to the trust fund. Funds in the trust fund must be used in a manner consistent with federal law.

(2) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, unless terminated sooner, the Broadband Pole Replacement Trust Fund shall be terminated 4 years after the effective date of this act. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

Section 2. The Division of Law Revision is directed to replace the phrase "4 years after the effective date of this act" wherever it occurs in this act with the date the trust fund will terminate.

Section 3. This act shall take effect on the same date that HB 1543 or similar legislation takes effect if such

legislation is adopted in the same legislative session or an extension thereof and becomes a law.