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