



BROADBAND-PP-02: STATUTORY REVISIONS TO THE BROADBAND OPPORTUNITY PROGRAM

COMMITTEE RECOMMENDATION: ADOPT

PROPOSED POLICY: FAC SUPPORTS the following statutory revisions to the state broadband grant program, Broadband Opportunity Program:

- Removal of the Federal funding prohibition
- Inclusion of waiver of match & rural considerations in grant review
- Removal of challenge processes that result in grant blocks
- Inclusion requirements for local involvement & strategic plan alignment
- Clarifying definitions to align grant final rule & statute

BACKGROUND: The Florida Association of Counties (FAC) and the FAC ACCESS 67 Broadband Initiative continue to support the ongoing effort to deliver affordable, reliable high-speed Internet for all Floridians. This includes the implementation of Local Technology Planning Teams (LTPTs) and engagement by local governments in nearly all 67 counties in Florida. The ACCESS 67 Broadband Champions aid the essential work of LTPTs to understand local challenges to broadband access, affordability, and the barriers that inhibit broadband expansion. FAC continues to support a granular-level mapping initiative through state and federal programs to better understand broadband speed availability so that no Floridian is left behind in the digital world.

This summer, the state and the Florida Office of Broadband initiated the next chapter for broadband deployment with the completion of the Florida Strategic Plan for Broadband. This achievement charts the path forward for state success. ACCESS 67 continues to promote engagement with the Office, county governments, and local stakeholders including Internet service providers (ISPs).

In June 2022, the Florida Office of Broadband within the Department of Economic Opportunity (DEO) initiated a rulemaking process for the Broadband Opportunity Program (BOP). Over the past few months, the Florida Office of Broadband provided stakeholder outreach with coordinated webinars, conference appearances, and regional workshops intended to offer guidance to the strategic plan and on-going grant rulemaking.

FAC staff along with the ACCESS 67 Initiative provided comments on the strategic plan and draft rules for the Broadband Opportunity Program, criteria, and scoring. To see the full FAC ACCESS 67 comments submitted, please see the attached document. Over the next few months, the Office of Broadband will publish and finalize its grant rules, application, and scoring criteria. FAC will continue its advocacy to support the concepts laid out in the attached document—[FAC Comments on Draft Rules for the Broadband Opportunity Program](#).



ANALYSIS:

While the Office of Broadband is granted discretion through its rulemaking authority, some portions of the state Broadband Opportunity Program will require statutory changes during the next session of the Florida Legislature. Listed below are statutory roadblocks contained within the Broadband Opportunity Program that inhibit Florida's counties from closing the Digital Divide.

Federal Funding Prohibition

F.S. 288.9962(8)(a.) specifically states that "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." FAC and the Small County Coalition expressed concerns and opposed this language during the legislative session.

Allowing state and federal funds to coexist under the Broadband Opportunity Program will permit local governments to leverage funds in the fullest capacity. By removing the prohibition in s. 288.9962(8)(a.), F.S. local entities will have access to federal resources.

Removing this prohibition will allow counties to use funding from multiple grants and separate grant cycles to complete a project. The prohibition effectively "siloes off" BOP grants from federal grants including the Capital Projects Fund, Federal Infrastructure Package programs, FCC programs etc.

Waiver of Match and Rural Considerations in Grant Review

FAC members—both commissioners and county staff, have routinely communicated concerns regarding their ability to fund technical assistance required by LTPTs and their financial ability to self-fund major infrastructure projects. This issue is not only voiced during stakeholder engagement, but is reflected throughout Florida Statutes: Waiver of Match for REDI projects—F.S. 288.06561, Rural considerations in grant review and evaluation processes—F.S. 288.019, Additional half-cent sales tax distribution for fiscally constrained counties—F.S. 218.67

F.S. 288.9962(8)(c) states "a grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project." This section is in conflict with the authority to provide waiver of match for program requirements outlined in F.S. 288.06561.

DEO is authorized to waive match requirement for rural areas. Additional clarity is needed to ensure waiver of match requirements are recognized in grant applications and awards.

Challenge Processes & Grant Blocks



F.S. 288.9962(6)(c) provides for a written challenge process following the submission of a BOP grant application. Challenge processes obstruct and delay applicants from initiating broadband deployment proposals. Additionally, there are no financial penalties for challengers if they fail to deliver broadband to the project area.

F.S. 288.9962(6)(f) only limits the submission of additional challenges from the provider. This leaves a possibility of a challenge resulting in a “grant block” effectively shutting a community out of the once-in-a-generation grant cycle. A grant block could result with an application prevented, service promised, and access denied for an unserved or underserved community.

Grant challenges by providers delivering deficient service (reliable-low latency, broadband internet) must be removed from the statute. The Office of Broadband or a contracted grant application review team has sufficient resources to determine whether a grant application qualifies to deploy broadband.

Local Involvement & Strategic Plan Alignment

Florida Statute 288.9962(7)(a) provides the grant evaluation criteria that the office must give priority to for awarding grants. Nine criteria are provided in the statute including:

- 6. Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- 9. Demonstrate consistency with the strategic plan adopted under s. [288.9961](#).

Section 9/Criteria E of the draft Grant Application/Criteria is dedicated to documenting local coordination. Section 10/Criteria F of the draft Grant Application is dedicated to documenting the alignment with the State Strategic Plan. While the scoring criteria includes these sections, approval of a project **does not require** an applicant to:

- Participate in a Local Technology Planning Team
- Provide Evidence of Community Support
- Align project goals with State Strategic Plan

From the explanation of Strategy 21 in the Strategic Plan: “Compliance with this Strategic Plan is a requirement for Grant Applicants.”

LTPT involvement, documented local support, and Strategic Plan alignment must be required criteria for grant awardees.

Without this requirement, applicants could circumvent the work of an LTPT and a community’s stated goals for broadband deployment. Furthermore, the collaboration and mandate of LTPTs is severely weakened if applicants can qualify for grants without involvement at the local level.



At a minimum, modification of the grant application scoring must reflect the significance of the LTPTs' and the Office's multi-year effort. The current 30 point, or 10%, total is a disservice to local efforts and the Office's monumental work to compile a comprehensive state broadband plan.

While FAC has submitted comments to BOP draft rules to include these criteria as requirements, a statutory change provides cohesion and emphasis to the strategic plan and commitment of local governments and LTPTs.

Additional Language for Consideration & Removal

- [s. 288.9962\(2\), F.S.](#) states: "Grant funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider."
 - BOP allows for underserved (federal guidelines) but the statute should be updated for consistency and to prevent others from arguing against this welcomed expansion
- [s. 288.9962\(8\)\(b\), F.S.](#) states: "A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service."
 - Once again, the BOP follows federal guidelines, but removal may be necessary for consistency

FISCAL IMPACT: Indeterminate

FAC STAFF NOTES:

- FAC 2022 Policy Conference
 - BROADBAND-PP-04 was recommended for adoption by the committee.
 - BROADBAND-PP-01 and BROADBAND-PP-02 were recommended to be incorporated into a strategic comprehensive broadband legislative policy (Broadband-PP-04).

FAC STAFF ANALYSIS:

- [Florida Strategic Plan for Broadband](#)
- Broadband Opportunity Program
 - [Broadband Opportunity Program Draft Rule](#)
 - [Draft Application](#)
 - [Draft Scoring Criteria](#).
- Statutes
 - [s. 288.9962\(2\), F.S.](#) deploy to a geographic area by one provider



- [s. 288.9961\(5\)\(d\), F.S.](#) *Promotion of broadband adoption; Florida Office of Broadband*
 - provided the Office of Broadband with rulemaking authority
- [s. 288.9962 \(8a.\), F.S.](#) *Broadband Opportunity Program*
 - “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.”
- [s. 288.9962\(8\)\(b\), F.S.](#) retail end user prohibition
- [s. 288.9962\(8\)\(c\), F.S.](#) BOP 50% match requirements
- [s. 288.9962\(6\)\(c\), F.S.](#) BOP challenge process
- [s. 288.06561, F.S.](#) *Reduction or waiver of financial match requirements*
- [s. 288.0656, F.S.](#) *Rural Economic Development Initiative*
- Bills
 - 2022:
 - [SB 1726](#) - Broadband by Sen. Ausley – Failed
 - Amended s. 288.9962, F.S. : Specifies guidelines and criteria for state and federal funds; Adds a section to expand applicable federal terms, guidelines, and criteria for the use of such funds
 - 2021:
 - [Ch. 2021-24, L.O.F. \(HB 1239\)](#)– Broadband Internet Infrastructure by Rep. Tomkow – Passed
 - Created the Opportunity Grant Program within DEO’s Office of Broadband. Created s. 22 288.9962, F.S.; The Opportunity Grant was established to expand broadband Internet service to unserved areas of this state. The Opportunity Grants are to fund the installation or deployment of infrastructure that supports the provision of broadband Internet service.
- Past FAC statements & Guiding Principles
 - Guiding Principle FTA 20. The Florida Association of Counties supports increased efforts to promote access to broadband, including competition and innovation in the marketplace, as well as provide resources to support accessibility, speed, and affordability of broadband in Florida.

SUBMITTING COUNTY AND CONTACT: FAC STAFF

ASSIGNED COMMITTEE: BROADBAND

BOARD SUPPORT: N/A

UNFUNDED MANDATE: N/A

PROTECTIVE OF HOME RULE: YES

