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**Energy & Utilities  
Subcommittee**

**MEETING PACKET**

**Tuesday, January 17, 2012  
212 Knott Building  
9:00 AM – 10:30 AM**

**Dean Cannon  
Speaker**

**Scott Plakon  
Chair**

# **The Florida House of Representatives**

**State Affairs Committee**

**Energy & Utilities Subcommittee**

**Dean Cannon  
Speaker**

**Scott Plakon  
Chair**

## **AGENDA**

January 17, 2012

9:00 a.m. - 10:30 a.m.

Webster Hall, 212 Knott Building

Opening Remarks by Chair Plakon

### **Consideration of the following bill(s):**

HB 391 by Clemens, Bernard and others – Sale of Motor Fuel

HB 945 by Holder – Broadband Internet Services

### **Workshop on the following:**

HB 889 by Eisnagle and others – Commercial Mobile Radio Services

Closing Remarks by Chair Plakon

Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 391 Sale of Motor Fuel  
**SPONSOR(S):** Clemens, Bernard, and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 476

| REFERENCE                          | ACTION | ANALYST             | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|------------------------------------|--------|---------------------|--|
| 1) Energy & Utilities Subcommittee |        | Whittier <i>shw</i> | Collins <i>JC</i>                        |
| 2) State Affairs Committee         |        |                     |  |

### SUMMARY ANALYSIS

There are approximately 9,025 gasoline retailers in the State of Florida. At most of these service stations, consumers may purchase gasoline by means of cash, debit, or credit. Credit card companies, however, charge the seller a specific percentage for each transaction (interchange fee). As high gas prices are resulting in more drivers paying with credit cards, these fees are adding up and lowering station owners' profits.

To counteract this negative fiscal effect (and authorized under the federal Cash Discount Act of 1981 and under state ss. 526.121 and 501.0117, F.S.), many retailers offer discounts of five to 14 cents a gallon to customers that pay for their gasoline with cash. In October 2011, the Petroleum Marketers Association of America, reportedly a federation of 48 state and regional trade associations representing 8,000 independent petroleum marketers nationwide, confirmed that the differences between cash and credit prices were due to interchange fees.

Currently in Florida, most retail gas stations have updated dispensers that have a two-tiered pricing option (referred to as dual PPU – price per unit – in the industry) that provides both the cash discount and credit card pricing directly on the pump. Those retailers that do not own modern pumps have the credit price posted on the pump, and then when cash is used, the pricing numbers roll back to the discounted price.

It is reported that there have been many complaints by drivers who are unaware of the price differential between cash and credit until they are at the pump. It is against the law to post deceptive retail fuel prices; however, some retail fuel purchasers claim that prices have been misrepresented.

Although s. 163.3202(2)(f), F.S., provides that local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum... (f) regulate signage, there is currently no federal or state requirement for both the cash and credit prices for gasoline to be posted on signage simultaneously.

The bill mandates that if a retail service station charges different prices for cash and credit sales, the respective price for each type of sale be displayed on all signage displaying the gasoline and motor fuel prices.

There appears to be no fiscal impact on state or local governments. See *Direct Economic Impact on Private Sector* section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

There are approximately 9,025 gasoline retailers in the State of Florida.<sup>1</sup> At most of these service stations, consumers may purchase gasoline by means of cash, debit, or credit. Credit card companies, however, charge the seller a specific percentage for each transaction (interchange fee). According to SmartMoney, “[E]ach time a driver swipes a credit card at the pump, station owners get hit with a credit card fee that typically ranges from 1.5% to 3% of the total purchase price. As high gas prices force more drivers to pay with plastic, these fees are adding up and eating into station owners' profits.”<sup>2</sup>

To counteract this negative fiscal effect [and authorized under the federal Cash Discount Act of 1981<sup>3,4</sup> and under state law (ss. 526.121<sup>5</sup> and 501.0117,<sup>6</sup> F.S.)], many retailers offer discounts of five to 14 cents a gallon to customers that pay for their gasoline with cash.<sup>7</sup> In October 2011, the Petroleum Marketers Association of America, reportedly a federation of 48 state and regional trade associations representing 8,000 independent petroleum marketers nationwide,<sup>8</sup> confirmed that the differences between cash and credit prices were due to interchange fees.<sup>9</sup> The Florida Petroleum Marketers and Convenience Stores Association state that while many independent retailers offer a discount for cash, that incentive has not yet become a majority practice in the industry.<sup>10</sup>

Currently, in Florida, most retail gas stations have updated dispensers that have a two-tiered pricing option (referred to as dual PPU – price per unit – in the industry) that provides both the cash discount and credit card pricing directly on the pump.<sup>11</sup> Those retailers that do not own modern dispensers have the credit price posted on the pump, and then when cash is used, the pricing numbers roll back to the discounted price.

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<sup>1</sup> Department of Agriculture and Consumer Services, Bureau of Petroleum Inspection website:

<http://www.freshfromflorida.com/standard/petro/index.html>.

<sup>2</sup> *Pay in Cash, Get Cheaper Gas*, by Annamaria Andriotis, June 24, 2008. Found on SmartMoney Website:

<http://www.smartmoney.com/spend/family-money/pay-in-cash-get-cheaper-gas-23349/>.

<sup>3</sup> The Cash Discount Act of 1981 was an amendment to the Truth in Lending Act and signed into law July 27, 1981, as Public Law 97-25. It permits retailers to offer unlimited discounts to their customers to encourage cash payments, use of checks, or similar means.

<sup>4</sup> According to *Senate Analysis for SB 476*, October 18, 2011, “Extending credit for gasoline existed for 60 years as a free service prior to the passage of the Cash Discount Act. In 1982, two major oil companies dropped their credit card programs and many other companies followed. As a result, two-tiered pricing models with ‘discount-for-cash’ programs came into existence. This major departure from the old practice of free extensions of credit resulted in charging credit users a few extra cents per gallon. Similarly, in Florida in the early 1980’s, Sing Oil Company instituted a cash for discount program, whereby a consumer paid a lower price for gasoline if he or she paid cash. This was challenged by the Florida Department of Agriculture and Consumer Services. The Second Judicial Circuit decided that s. 526.121, Florida Statutes, was intended to stop misleading pricing and Sing’s posting of a different price was not misleading, but instead only the ‘granting of a discount.’”

<sup>5</sup> Section 526.121, F.S., states that there is no prohibition on a price differential between a cash sale and a credit sale of the same grade of gasoline nor between self-service pumps and attendant-controlled pumps supplied from a common storage at the same service station.

<sup>6</sup> Section 501.0117(1), F.S., permits the offering of a discount for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, if the discount is offered to all prospective customers.

<sup>7</sup> *Pay in Cash, Get Cheaper Gas*, by Annamaria Andriotis, June 24, 2008. Found on SmartMoney Website:

<http://www.smartmoney.com/spend/family-money/pay-in-cash-get-cheaper-gas-23349/>.

<sup>8</sup> Petroleum Marketers Association of America website: <http://www.pmaa.org/index.asp>.

<sup>9</sup> *Cash or Credit at the Gas Pump? The Choice is Costing You*, by Halah Touryalai, October 21, 2011. Found on Forbes website:

<http://www.forbes.com/sites/halahtouryalai/2011/10/21/cash-or-credit-at-the-gas-pump-the-choice-is-costing-you/>.

<sup>10</sup> Email correspondence from a representative of the Florida Petroleum Marketers and Convenience Stores Association, January 13, 2012.

<sup>11</sup> Correspondence with Joey Cheek, President of JMP Solutions, distributor for retail fuel dispensers, November 15, 2011.

It is reported that there have been many complaints by drivers who are unaware of the price differential between cash and credit until they are at the pump.<sup>12</sup> It is against the law to post deceptive retail fuel prices; however, some retail fuel purchasers claim that prices have been misrepresented.<sup>13</sup>

Although s. 163.3202(2)(f), F.S., provides that local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum...(f) regulate signage, there is currently no federal or state requirement for both the cash and credit prices for gasoline to be posted on signage simultaneously.<sup>14</sup>

### **Effect of Proposed Changes**

The bill mandates that if a retail service station charges different prices for cash and credit sales, the respective price for each type of sale be displayed on all signage displaying the gasoline and motor fuel prices.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 526.121, F.S., relating to the pricing of motor fuels.

**Section 2.** Provides an effective date of July 1, 2012.

## **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.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The Florida Petroleum Marketers and Convenience Stores Association asserts the following:

The cost of retrofitting or replacing street signage could cost up to \$10,000 per sign. Many retail service stations will be financially unable to comply with the new requirements. Zoning and permitting issues apply to signage in every city and county, and compliance with the bill may not be possible in certain instances, but certainly will present additional time and money problems for retailers. According to the industry, this high cost of compliance will

<sup>12</sup>Gasbuddy website: <http://www.gasbuddy.com/>.

<sup>13</sup> Section 531.44(1), F.S., provides that, "No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person."

<sup>14</sup> 16 CFR, s. 306.10.

prohibit stations from offering a discount for cash purchases in most circumstances and will result in higher prices for those who would prefer to pay with cash and receive the discount.<sup>15</sup>

Also see *Drafting Issues or Other Comments* section.

D. FISCAL COMMENTS:

See *Drafting Issues or Other Comments* section.

### 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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Comments from the Department of Agriculture and Consumer Services**

The definition of 'signage' must be specifically stated in the bill. This is because all motor fuel computing type dispensers post the unit price for each product for the specific method of payment (albeit not always simultaneously), which is required by Department rule.

If 'signage' is defined to include the individual motor fuel dispensers, most stations would be required to replace or modify their present motor fuel dispensers so as to be able to simultaneously display both cash and credit prices for all products. In this event, the impact on the private sector could be significant.

If 'signage' does not include the actual motor fuel dispensers, or does not require the simultaneous posting of prices on the motor fuel dispensers, this would not be an issue.

This bill may also affect existing road side signage at retail service stations. If simultaneous posting of prices is required, stations may be required to alter the size of their existing signage to accommodate additional prices, or will have to reduce the number of products advertised, in order to retain existing signage size.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>15</sup> Email correspondence with the Florida Petroleum Marketers and Convenience Stores Association, January 13, 2012.

1                                   A bill to be entitled  
 2           An act relating to the sale of motor fuel; amending s.  
 3           526.121, F.S.; requiring retail service stations that  
 4           charge different prices for cash sales and credit  
 5           sales of motor fuel to display the respective price  
 6           for each type of sale; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Section 526.121, Florida Statutes, is amended  
 11   to read:

12           526.121 Pricing restrictions; separation of gasolines.—

13           (1) The posting at retail service stations of a different  
 14   price for the same grade of gasoline dispensed from one pump  
 15   than from another pump supplied from a common storage at the  
 16   same service station when represented to be and is sold as the  
 17   same quality of gasoline is unlawful.

18           (2) (a) This section ~~does shall~~ ~~not be construed to~~  
 19   prohibit a price differential between a cash sale and a credit  
 20   sale of the same grade of gasoline or between self-service pumps  
 21   and attendant-controlled pumps supplied from a common storage at  
 22   the same service station.

23           (b) However, if a station charges different prices for  
 24   cash sales and credit sales, the respective price for each type  
 25   of sale must be displayed on all signage displaying gasoline and  
 26   motor fuel prices.

27           Section 2. This act shall take effect July 1, 2012.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 391 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Energy & Utilities  
2 Subcommittee

3 Representative Clemens offered the following:

4 **Amendment (with title amendment)**

5 Remove lines 24-26 and insert:

6 cash sales and credit sales, the highest price must be displayed  
7 on all signage displaying gasoline and motor fuel prices visible  
8 from the main-traveled way, as defined in chapter 479.

11 -----  
12 **T I T L E A M E N D M E N T**


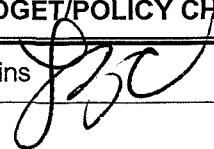
13 Remove lines 5-6 and insert:

14 sales of motor fuel to display the highest price on certain  
15 signage; providing an effective date.

HB 945

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 945 Broadband Internet Service  
**SPONSOR(S):** Holder  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1242

| REFERENCE                          | ACTION | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|------------------------------------|--------|---|---|
| 1) Energy & Utilities Subcommittee |        | Keating  | Collins  |
| 2) Economic Affairs Committee      |        |   |   |
| 3) Appropriations Committee        |        |   |   |
| 4) State Affairs Committee         |        |   |   |

### SUMMARY ANALYSIS

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities. In 2009, the Legislature authorized the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

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

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."

HB 945 replaces DMS with DEO as the agency responsible for implementing the state's broadband program and designates DEO as the single state entity to receive and manage all federal State Broadband Initiative (SBI) funds. Further, the bill:

- Adds nonprofit corporations to the list of entities with which DEO must work collaboratively in implementing the state's broadband program.
- Adds community development as a goal of sustainable broadband adoption.
- Requires that DEO's strategic plan to increase use of broadband Internet service in Florida be developed with the use of consumer research into residential and business technology utilization data.
- Specifies that broadband mapping efforts conducted under DEO must, at a minimum, identify transmission speeds and unserved and underserved areas at the census block level of detail.

The bill does not provide for the transfer of positions and funds from the Department of Management Services (DMS) to the Department of Economic Opportunity (DEO). Thus, the bill may require expenditures to establish the expertise necessary for the DEO to administer the state broadband program. A transfer of grant funds previously awarded to DMS would require approval by the federal State Broadband Initiative.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

In 2008, Congress passed the Broadband Data Improvement Act<sup>1</sup> to improve the quality of federal and state data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the nation. In early 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has "access to broadband capability." Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes."<sup>2</sup> The Plan developed by the FCC can be found at <http://www.broadband.gov/plan/>.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities, focusing on schools, libraries, health care, educational institutions, non-profit community organizations, and the construction of broadband infrastructure. Two federal agencies are handling the distribution of broadband grants/awards through an application process. The U.S. Department of Agriculture's Rural Utilities Service (RUS) was authorized to make loans and grants totaling \$2.5 billion for broadband infrastructure projects in rural areas through its Broadband Initiatives Program (BIP). The U.S. Department of Commerce's National Telecommunications Information Administration (NTIA) was authorized to provide grants totaling \$4.7 billion to fund comprehensive broadband infrastructure projects, public computer centers, and sustainable broadband adoption projects through its Broadband Technology Opportunities Program (BTOP).

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

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

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.<sup>3</sup>

Current law provides that "[t]he Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations."<sup>4</sup>

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<sup>1</sup> Broadband Data Improvement Act, Pub. L. No. 110-385, S. 1492, 122 Stat. 4096.

<sup>2</sup> See <http://www.broadband.gov/plan/executive-summary/>.

<sup>3</sup> Section 364.0135, F.S.

<sup>4</sup> Section 364.0135(1), F.S.

In 2009, the NTIA launched the State Broadband Initiative (SBI) to implement the purposes of the ARRA and the Broadband Data Improvement Act. According to the NTIA's SBI website,<sup>5</sup> twelve separate entities within Florida have been awarded a combined total of \$183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects. Among those awards, DMS was awarded a total of \$8,877,028<sup>6</sup> for the following purposes:

- Provide technical assistance to Florida anchor institutions for the E-rate program for increasing school and library telecommunications funding to procure services and technology from the private sector.
- Develop regional planning teams, in partnership with the Florida Regional Planning Councils, to assist in local and regional broadband planning.
- Provide further funding opportunity development and assistance to anchor institutions to secure additional funding to expand broadband usage throughout the state from the private sector.
- Provide for broadband data inventory, analysis and mapping.
- Provide technology assessments to libraries to increase funding to purchase broadband from the private sector.

With some of the funds provided through the ARRA, DMS partnered with a national organization called Connected Nation<sup>7</sup> to map landline and wireless broadband services using information from service providers and other sources. This mapping project is intended to better identify the location of Florida's unserved and underserved areas. The efforts of this project can be found at <http://www.connect-florida.org/>.<sup>8</sup>

In addition to its role in promoting broadband service adoption, DMS, through its Division of Telecommunications, has managed a number of telecommunications service programs for the state. According to DMS, the duties of its Division of Telecommunications include the following:

- Implementing SUNCOM, the state enterprise telecommunications system for providing local and long-distance communications services to state agencies, political subdivisions of the state, municipalities, and nonprofit corporations.<sup>9,10</sup>
- Managing public safety communications planning, coordination, and procurement, including the Statewide Law Enforcement Radio System (SLERS) and contract.<sup>11</sup>
- Managing 911 communications and technology planning and coordination, and managing related grants.<sup>12</sup>

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."<sup>13</sup> To accomplish this purpose, DEO is provided the following duties:

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<sup>5</sup> <http://www2.ntia.doc.gov/SBDD>

<sup>6</sup> <http://www2.ntia.doc.gov/grantee/florida-department-of-management-services>. According to DMS, it also developed and applied for a broadband adoption grant under the BTOP on two occasions using a "community development" model proposed by Connected Nation (see footnote below), though both applications, along with applications from other states proposing similar programs, were denied.

<sup>7</sup> Connected Nation is a nonprofit corporation whose Board of Directors is represented by CTIA-The Wireless Association, the Telecommunications Industry Association, the American Farm Bureau Federation, The Children's Partnership, and Intel. Its work is directed by the Board and a National Advisory Council comprised of a number of telecommunications companies and industry organizations, technology companies, and nonprofit organizations. The full list of members can be found at [http://connectednation.org/who\\_we\\_are/national\\_advisors/](http://connectednation.org/who_we_are/national_advisors/).

<sup>8</sup> According to DMS, after a first-year performance evaluation of this initial contractor, DMS developed a second competitive procurement "to improve performance, reduce cost and increase the usefulness of the project results to Florida stakeholders."

<sup>9</sup> Section 282.703, F.S. The SUNCOM Network must be developed to transmit all types of telecommunications signals, including, but not limited to, voice, data, video, image, and radio.

<sup>10</sup> According to DMS, SUNCOM represents a public-private model in which over 95% of the budget is outsourced to telecommunications vendors in the state.

<sup>11</sup> Section 282.709, F.S.

<sup>12</sup> Section 365.171, F.S.

<sup>13</sup> Section 1, ch. 2011-142, Laws of Florida.

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.
- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.<sup>14</sup>

### **Effect of Proposed Changes**

The bill replaces the Department of Management Services (DMS) with the Department of Economic Opportunity (DEO) as the state's single designated entity to receive and manage all federal State Broadband Initiative (SBI) funds. As discussed in the Fiscal Comments section, below, a transfer of grant funds previously awarded to DMS would require approval by the SBI.

The bill requires DEO to establish a public-private partnership that will work collaboratively with the same list of entities that DMS currently works with (i.e., Enterprise Florida, state agencies, local governments, private businesses, and community organizations), and the bill adds "nonprofit corporations" to this list of entities. The bill does not specify the type of private entity that DEO should consider in developing a public-private partnership (as opposed to those private entities with which the partnership must work collaboratively).

The bill also modifies the existing legislative finding in s. 364.0135(1), F.S., to state that "that the sustainable adoption of broadband Internet service is critical to the economic, business, *and community* development of the state ...." It is not clear what the addition of the term "community development" may entail or who is covered.

The bill provides that DEO's strategic plan to increase use of broadband Internet service in Florida must be "developed with the use of consumer research into residential and business technology utilization data ...." Further, the bill specifies that broadband mapping efforts conducted under DEO must "at a minimum" identify transmission speeds and unserved and underserved areas at the census block level of detail. Current law provides that these areas be identified at the census tract level. This will require mapping at a higher level of detail.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 364.0135, F.S., relating to promotion of broadband adoption.

**Section 2.** Provides an effective date of July 1, 2012.

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<sup>14</sup> Section 20.60(4), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments section.

#### 2. Expenditures:

The bill does not provide for the transfer of positions and funds from the Department of Management Services (DMS) to the Department of Economic Opportunity (DEO). Thus, the bill may require expenditures to establish the expertise necessary for the DEO to administer the state broadband program.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments section.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

### D. FISCAL COMMENTS:

Currently, the Department of Management Services (DMS) is the sole entity designated by the State of Florida to accept funds under the federal State Broadband Initiative (SBI) program. To maintain the grants awarded to DMS to date, a transfer of these awards to a new entity would require approval by the SBI within the U.S. Department of Commerce.<sup>15</sup> According to DMS, the SBI has approved two transfers, and the process required significant work and lead time for the existing grantee, new grantee, and the SBI office. DMS also indicates that, to achieve approval of such a transfer, the grant award must be transferred in its entirety to the new entity, and the new entity must continue the same work as set forth in the original award. According to DMS, this means that the programs and budgets must remain the same and the staff must remain whole or substantially intact.

According to DMS, if the SBI does not approve the transfer of these grant awards from DMS to the Department of Economic Opportunity, local governments could incur a loss of \$502,000 through broadband planning with regional planning councils and a potential loss of new funds for expanding broadband technology to schools and libraries due to the loss of technical assistance in seeking these funds. DMS also indicates that if the SBI does not approve the transfer, funding of \$630,889 for broadband inventory and mapping services provided under contract could be lost.

## 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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

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<sup>15</sup> See U.S. Department of Commerce Grants Manual, Chapter 16, W., *Transfer of Award*.

to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill transfers from DMS to DEO the existing authority to adopt rules to implement s. 364.0135, F.S. To date, DMS has not adopted rules to implement this section.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 945

2012

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A bill to be entitled  
An act relating to broadband Internet service;  
amending s. 364.0135, F.S.; revising provisions to  
promote adoption of broadband Internet service;  
providing for the Department of Economic Opportunity  
to receive and manage certain federal funds; directing  
the department to establish a public-private  
partnership to perform certain functions; authorizing  
the department to accept certain funds, enter into  
contracts, and establish committees and workgroups for  
certain purposes; authorizing the department to adopt  
rules; removing authority of the Department of  
Management Services to perform certain functions;  
providing an effective date.

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

Section 1. Section 364.0135, Florida Statutes, is amended  
to read:

364.0135 Promotion of broadband adoption.—

(1) The Legislature finds that the sustainable adoption of  
broadband Internet service is critical to the economic, and  
business, and community development of the state and is  
beneficial for libraries, schools, colleges and universities,  
health care providers, and community organizations. The term  
"sustainable adoption" means the ability for communications  
service providers to offer broadband services in all areas of  
the state by encouraging adoption and utilization levels that

29 allow for these services to be offered in the free market absent  
 30 the need for governmental subsidy.

31 (2) The Department of Economic Opportunity shall be the  
 32 state's single designated entity to receive and manage all  
 33 federal Department of Commerce State Broadband Initiative funds  
 34 and shall establish a public-private partnership that will  
 35 ~~Management Services is authorized to~~ work collaboratively with,  
 36 and ~~to~~ receive staffing support and other resources from,  
 37 Enterprise Florida, Inc., state agencies, local governments,  
 38 private businesses, nonprofit corporations, and community  
 39 organizations to:

40 (a) Monitor the adoption of broadband Internet service in  
 41 collaboration with communications service providers, including,  
 42 but not limited to, wireless and wireline Internet service  
 43 providers, to develop geographical information system maps ~~at~~  
 44 ~~the census tract level~~ that will, at a minimum:

45 1. Identify geographic gaps in broadband services,  
 46 including areas unserved by any broadband provider and areas  
 47 served by a single broadband provider at the census block level  
 48 of detail;

49 2. Identify the download and upload transmission speeds  
 50 made available to businesses and individuals in the state, at  
 51 the census block ~~tract~~ level of detail, using data rate  
 52 benchmarks for broadband service used by the Federal  
 53 Communications Commission to reflect different speed tiers; and

54 3. Provide a baseline assessment of statewide broadband  
 55 deployment in terms of percentage of households with broadband  
 56 availability.

57 (b) Create a strategic plan, developed with the use of  
 58 consumer research into residential and business technology  
 59 utilization data, which ~~that~~ has goals and strategies for  
 60 increasing the use of broadband Internet service in the state.

61 (c) Build and facilitate local technology planning teams  
 62 or partnerships with members representing cross-sections of the  
 63 community, which may include, but are not limited to,  
 64 representatives from the following organizations and industries:  
 65 libraries, K-12 education, colleges and universities, local  
 66 health care providers, private businesses, community  
 67 organizations, economic development organizations, local  
 68 governments, tourism, parks and recreation, and agriculture.

69 (d) Encourage the use of broadband Internet service,  
 70 especially in the rural, unserved, and underserved communities  
 71 of the state through grant programs having effective strategies  
 72 to facilitate the statewide deployment of broadband Internet  
 73 service. For any grants ~~to be~~ awarded, priority must be given to  
 74 projects that:

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

79 2. Encourage the sustainable adoption of broadband in  
 80 primarily unserved areas by removing barriers to entry.

81 3. Work toward encouraging investments in establishing  
 82 affordable and sustainable broadband Internet service in  
 83 unserved areas of the state.

84 4. Facilitate the development of applications, programs,

85 and services, including, but not limited to, telework,  
 86 telemedicine, and e-learning to increase the usage of, and  
 87 demand for, broadband Internet service in the state.

88 (3) The department may apply for and accept federal funds  
 89 for purposes of this section, as well as gifts and donations  
 90 from individuals, foundations, and private organizations.

91 (4) The department may enter into contracts necessary or  
 92 useful to carry out the purposes of this section.

93 (5) The department may establish any committee or  
 94 workgroup to administer and carry out the purposes of this  
 95 section.

96 (6) The department may adopt rules necessary to carry out  
 97 the purposes of this section. Any rule, contract, grant, or  
 98 other activity undertaken by the department shall ensure that  
 99 all entities are in compliance with any applicable federal or  
 100 state laws, rules, and regulations, including, but not limited  
 101 to, those applicable to private entities providing  
 102 communications services for hire and the requirements of s.  
 103 350.81.

104 Section 2. This act shall take effect July 1, 2012.



# **HB 889 – COMMERCIAL MOBILE RADIO SERVICES SUMMARY**

## **Section 1.**

Provides that the act shall be cited as the “Wireless Anti-Fraud Act of 2012.”

## **Section 2.**

- Defines terms for purposes of the act.
- Prohibits a commercial mobile radio service (i.e., wireless) carrier from:
  - Charging or collecting from a consumer any amount, on behalf of a third-party application provider, not expressly authorized by the primary account holder.
  - Obtaining the primary account holder’s authorization for such charges through misleading or deceptive means.
  - Charging or collecting from a consumer any amount for, or otherwise profiting from, blocking the consumer’s account from third-party charges or for processing the consumer’s complaints about the addition of such charges.
- Establishes criteria for wireless carriers to confirm consumer authorization of third-party charges prior to billing:
  - The third-party application provider must submit to the carrier the first and last name of the consumer who requested the charge, as well as the consumer’s wireless telephone number.
  - The carrier must provide notice to the primary account holder that discloses:
    - That a third-party is requesting a charge be imposed.
    - A description of the item for which the charge is requested.
    - The amount of the charge requested.
    - The frequency of the charge (i.e., one-time or recurring)
    - The name and valid telephone number of the third-party.
  - The primary account holder, after receiving the notice from the carrier, must submit to the carrier express authorization of the charge either: in writing; by SMS text message; by e-mail message; or by recorded verbal authorization.
- Requires a carrier to maintain documentation of compliance for at least 4 years.
- Requires a carrier to immediately reverse a charge upon complaint by a consumer that the charge violates the act.
- Provides that a violation of the act constitutes an unfair and deceptive trade practice, and any award of damages must be at least \$500 per violation or \$1,500 per violation for repeat violations within 3 years.

## **Section 3.**

Provides direction to the Division of Statutory Revision regarding placement of the act.

## **Section 4.**

Provides an effective date of July 1, 2012.



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28 | circumstances; providing a directive to the Division  
29 | of Statutory Revision; providing an effective date.

30 |  
31 | Be It Enacted by the Legislature of the State of Florida:

32 |  
33 | Section 1. This act may be cited as the "Wireless Anti-  
34 | Fraud Act of 2012."

35 | Section 2. Section 501.180, Florida Statutes, is created  
36 | to read:

37 | 501.180 Commercial mobile radio services; unauthorized,  
38 | misleading, or deceptive charges.-

39 | (1) As used in this section, the term:

40 | (a) "Commercial mobile radio service carrier" or "carrier"  
41 | means a person who provides a commercial mobile radio service as  
42 | defined in 47 C.F.R. s. 20.3 and offers in the state any mobile  
43 | service listed in 47 C.F.R. s. 20.9.

44 | (b) "Primary account holder" means:

45 | 1. The party identified in the carrier's account records  
46 | as responsible for payment of charges on the consumer's account;

47 | 2. An adult person authorized by such party to incur any  
48 | charge on the consumer's account for third-party applications,  
49 | content, services, or other things; or

50 | 3. A person contractually or otherwise lawfully authorized  
51 | to represent such party.

52 | (c) "Third-party application provider" means a person  
53 | other than a carrier who provides or offers applications,  
54 | content, services, or other things, which may include, but are



55 not limited to, ringtones, games, or streaming music or video,  
 56 to consumers across the carrier's network.

57 (2) A commercial mobile radio service carrier may not:

58 (a) Add any charge to a consumer's account or collect any  
 59 payment from a consumer at the request of or on behalf of a  
 60 third-party application provider that has not been expressly  
 61 authorized by the primary account holder in accordance with  
 62 subsection (3).

63 (b) Obtain the primary account holder's authorization  
 64 through misleading or deceptive means.

65 (c) Impose any charge, collect any payment from a  
 66 consumer, or otherwise profit from:

67 1. Blocking a consumer's account from incurring charges  
 68 from third-party application providers; or

69 2. Receiving, handling, or processing a consumer's  
 70 complaint or dispute of any charge added to the consumer's  
 71 account at the request of or on behalf of a third-party  
 72 application provider.

73 (3) A charge is authorized by a consumer, and consequently  
 74 does not violate this section, if, before the carrier adds the  
 75 charge to the consumer's account:

76 (a) The third-party application provider submits to the  
 77 carrier the first and last names of the consumer who requested  
 78 the charge and the telephone number of the wireless device  
 79 assigned in the carrier's account records to the consumer.

80 (b) The carrier provides notice to the primary account  
 81 holder that clearly and conspicuously discloses:

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- 82 |       1. That the third-party application provider is requesting  
 83 | that a charge be added to the consumer's account.
- 84 |       2. A description of the third-party applications, content,  
 85 | services, or other things for which the charge is being  
 86 | requested.
- 87 |       3. The amount of the requested charge.
- 88 |       4. Whether the requested charge is a one-time or recurring  
 89 | charge and, if a recurring charge, the frequency at which the  
 90 | recurring charge would be added to the consumer's account.
- 91 |       5. The name and valid telephone number of the third-party  
 92 | application provider requesting the charge.
- 93 |       (c) The primary account holder, after receiving notice of  
 94 | the requested charge under paragraph (b), submits to the carrier  
 95 | his or her express authorization of the charge in one or more of  
 96 | the following formats:
- 97 |           1. A written authorization signed by the primary account  
 98 | holder.
- 99 |           2. A short message service text message submitted from a  
 100 | wireless device assigned in the carrier's account records to the  
 101 | primary account holder.
- 102 |           3. An electronic mail message submitted from an e-mail  
 103 | address assigned in the carrier's account records to the primary  
 104 | account holder.
- 105 |           4. A recorded verbal authorization of the primary account  
 106 | holder.
- 107 |       (4) A charge is deemed to be unauthorized and constitutes  
 108 | a violation of this section if the carrier does not maintain

109 documentation demonstrating compliance with this section for at  
 110 least 4 years.

111 (5) Upon receipt or notice of a consumer's complaint or  
 112 dispute of any charge that violates this section, the carrier  
 113 shall immediately reverse the charge.

114 (6) A violation of this section constitutes an unfair and  
 115 deceptive trade practice in violation of part II of this chapter  
 116 and is subject to the penalties and remedies provided therein  
 117 for such a violation, except that any award of damages,  
 118 regardless of the actual amount of damages, must be at least:

119 (a) One thousand five hundred dollars per violation, if  
 120 the carrier was found to have committed a violation of this  
 121 section within 3 years before the date of the subject violation.

122 (b) Five hundred dollars per violation, if the carrier was  
 123 not found to have committed a violation of this section within 3  
 124 years before the date of the subject violation.

125  
 126 For purposes of this subsection, each charge added to a  
 127 consumer's account in violation of this section constitutes a  
 128 separate violation.

129 Section 3. The Division of Statutory Revision of the  
 130 Office of Legislative Services is directed to assign s. 501.180,  
 131 Florida Statutes, as created by this act, to part I of chapter  
 132 501, Florida Statutes.

133 Section 4. This act shall take effect July 1, 2012.