

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Tourism, Infrastructure &
 2 Energy Subcommittee

3 Representative DiCeglie offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (4) through (9) are added to section
 8 366.02, Florida Statutes, to read:

9 366.02 Definitions.—As used in this chapter:

10 (4) "Attaching entity" means a person that is a local
 11 exchange carrier, a public utility, a communications services
 12 provider, a broadband service provider, or a cable television
 13 operator who owns or controls pole attachments.

14 (5) "Communications services" has the same meaning as in
 15 s. 202.11.

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16 (6) "Pole" means a pole, duct, conduit, or right-of-way
17 that is used for wire or wireless communications or electricity
18 distribution and that is owned in whole or in part by a pole
19 owner, or a streetlight fixture that is owned in whole or in
20 part by a public utility.

21 (7) "Pole attachments" means local exchange carrier,
22 electric, communications services, broadband, or cable
23 television facilities attached to a pole by an entity other than
24 the pole owner.

25 (8) "Pole owner" means a local exchange carrier, a public
26 utility, a communications services provider, a cable television
27 operator, or other public utility which owns a pole used in
28 whole or in part, for electrical purposes or for any wire or
29 wireless communications.

30 (9) "Redundant pole" means a pole owned or controlled by a
31 pole owner which is:

32 1. Within 50 feet of a new pole which is intended to
33 replace the old pole from which some or all of the pole
34 attachments have not been removed and transferred to the new
35 pole;

36 2. Left standing after the pole owner has relocated its
37 facilities to underground but on which pole attachments of other
38 attaching entities remain; or

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39 3. Left standing after a pole owner's attachments have
40 been removed from that route or location to accommodate a new
41 route or design for the delivery of service.

42
43 Section 2. Subsections (8) and (9) are added to section
44 366.04, Florida Statutes, to read:

45 366.04 Jurisdiction of commission.—

46 (8) (a) The commission shall regulate and enforce rates,
47 charges, terms, and conditions for pole attachments in
48 situations in which a pole owner is unable to reach an agreement
49 with a party seeking pole attachments, including the types of
50 attachments regulated under 47 U.S.C. s. 224(a) (4), attachments
51 to streetlight fixtures, or attachments to poles owned by a
52 communications services provider, to ensure that such rates,
53 charges, terms, and conditions are just and reasonable. The
54 commission's authority under this subsection includes, but is
55 not limited to, the state regulatory authority referenced in 47
56 U.S.C. s. 224(c).

57 (b) In developing the rules, the commission shall consider
58 the interests of the subscribers and users of the services
59 offered through such pole attachments, as well as the interests
60 of the consumers of any pole owner providing such attachments.

61 (c) It is the intent of the Legislature to encourage
62 parties to enter into voluntary pole attachment agreements, and
63 this subsection may not be construed to prevent parties from

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64 voluntarily entering into pole attachment agreements, without
65 commission approval.

66 (d) A party's right to nondiscriminatory access to a pole
67 under this subsection is identical to the rights afforded under
68 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its
69 poles on a nondiscriminatory basis when there is insufficient
70 capacity, for reasons of safety and reliability, and when
71 required by generally applicable engineering purposes. A pole
72 owner's evaluation of capacity, safety, reliability, and
73 engineering requirements must consider relevant construction and
74 reliability standards approved by the commission, and may
75 include an evaluation of the financial and performance-related
76 capabilities of the entity requesting attachment.

77 (e) The commission shall hear and resolve complaints
78 concerning rates, charges, terms, conditions, voluntary
79 agreements, or any denial of access relative to pole attachments
80 with regard to the types of attachments regulated under 47
81 U.S.C. s. 224, attachments to streetlight fixtures, or
82 attachments owned by a communications services provider. Federal
83 Communications Commission precedent is not binding upon the
84 commission in the exercise of its authority under this
85 subsection.

86 (f) Upon commencement of its authority under this
87 subsection, the commission, upon the request of a party to a
88 complaint proceeding pending before the Federal Communications

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89 Commission, shall assume jurisdiction over the matter if it is
90 not yet subject to a final order of the Federal Communications
91 Commission at the time of the request.

92 (g) The commission shall adopt rules by October 1, 2021,
93 to administer and implement this subsection, including one or
94 more appropriate formulae for apportioning costs, and shall,
95 upon adoption of such rules, provide its certification to the
96 Federal Communications Commission pursuant to 47 U.S.C. s.
97 224(c) (2).

98 (9) (a) The commission shall regulate the safety,
99 vegetation management, repair, replacement, maintenance,
100 relocation, emergency response, and storm restoration
101 requirements for poles, conduits, ducts, pipes, pole
102 attachments, wires, cables, and related plant and equipment of
103 communication services providers. The commission shall require
104 communications services providers to establish storm reserve
105 funds for the repair and replacement of facilities after natural
106 disasters.

107 (b) The commission shall adopt rules by October 1, 2021,
108 to administer and implement this subsection, including, but not
109 limited to:

110 1. Mandatory pole inspections, including repair or
111 replacement; vegetation management requirements for poles owned
112 by providers of communications services; the establishment of

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113 storm reserve funds; and the sequential and timely removal of
114 pole attachments; and

115 2. Monetary penalties to be imposed upon any communication
116 services provider that fails to comply with any such rule of the
117 commission.

118 Section 3. Section 366.97, Florida Statutes, is created to
119 read:

120 366.97 Redundant poles; transfer of ownership; penalties.-

121 (1) The Legislature finds that:

122 (a) It is in the public interest for public utilities,
123 communications services providers, and cable television
124 operators that own poles to harden their infrastructure to
125 strengthen the ability of their above-ground infrastructure to
126 withstand extreme weather conditions, by and among other things,
127 replacing older poles with newer, stronger poles; however, this
128 work combined with the undergrounding of electrical facilities
129 may result in redundant poles within public rights-of-way and
130 easements for significant durations because owners of third-
131 party pole attachments may not keep pace in removing their
132 facilities from the old poles.

133 (b) Pole owners that set new poles are prevented from
134 removing redundant poles when the pole attachments of other
135 entities remain on the old poles.

136 (c) Redundant poles in the public rights-of-way and
137 easements are aesthetically unappealing and potentially create

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138 over-crowding of, and unsafe conditions in, the public rights-
139 of-way and easements.

140 (d) It is in the public interest to timely remove pole
141 attachments from redundant poles and to transfer the ownership
142 of poles from pole owners that are no longer using the poles to
143 entities that continue to attach facilities to the poles.

144 (2) (a) An attaching entity must remove its pole
145 attachments from a redundant pole within 180 calendar days after
146 receipt of electronic or written notice from the pole owner
147 requesting such removal. The commission shall determine by rule
148 the sufficiency of, and requirements for, such notice.

149 (b) If an attaching entity fails to remove a pole
150 attachment pursuant to paragraph (a), except to the extent
151 excused by an event of force majeure or other good cause as
152 determined by the commission, the pole owner or its agent may
153 transfer or relocate the pole attachment to the new pole at the
154 non-compliant attaching entity's expense. This subsection does
155 not apply to an electric utility's pole attachments. The
156 noncompliant attaching entity shall indemnify, defend, and hold
157 harmless the pole owner and its directors, officers, agents and
158 employees from and against all liability, except to the extent
159 of any finding of gross negligence or willful misconduct,
160 including attorneys' fees and litigation costs, arising in
161 connection with the transfer of the pole attachment from a
162 redundant pole to a new pole by the pole owner.

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163 (c) If a pole attachment is no longer in use by a
164 noncompliant attaching entity, the pole owner or its agent may
165 remove the pole attachment at the noncompliant attaching
166 entity's expense and may sell or dispose of the pole attachment,
167 except to the extent the attaching entity's noncompliance is
168 excused by an event of force majeure or other good cause as
169 determined by the commission. The noncompliant attaching entity
170 shall indemnify, defend, and hold harmless the pole owner and
171 its directors, officers, agents, and employees from and against
172 all liability, except to the extent of any finding of gross
173 negligence or willful misconduct, including attorney fees and
174 litigation costs, arising in connection with the removal,
175 transfer, sale, or disposal of the pole attachments from a
176 redundant pole by the pole owner.

177 (d) The commission may require by rule that an attaching
178 entity post security instruments in favor of pole owners in
179 amounts reasonably sufficient to cover the cost of the removal,
180 transfer, sale, or disposal of pole attachments.

181 (3) (a) When a pole owner removes and relocates its
182 overhead facilities or converts its overhead facilities to
183 underground, in lieu of removal, transfer, sale, or disposal of
184 the pole attachments as provided in subsection (2), the pole
185 owner may transfer legal title of the redundant pole to an
186 attaching entity that has not removed a pole attachment within
187 180 calendar days after receipt of a notice to remove, except to

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188 the extent excused by an event of force majeure or other good
189 cause as determined by the commission.

190 (b) Transfer of title shall occur by operation of law upon
191 the date a written notice of title transfer is sent by the pole
192 owner. The notice of title transfer must include pole
193 identification numbers, if applicable, and must describe with
194 specificity the locations of the pole or poles to be transferred
195 and their corresponding remaining book value.

196 (c) Within 60 days after transferring title, the attaching
197 entity shall remit payment to the transferor pole owner an
198 amount equal to the total of the remaining book value for all
199 poles listed in the notice of title transfer.

200 (d) A transferor pole owner may seek to enforce its rights
201 under this subsection, including its right to payment, in the
202 circuit court in whose jurisdiction the transferred poles are
203 located. The transferor pole owner is entitled to prejudgment
204 interest at the prevailing statutory rate and the prevailing
205 party in any such action is entitled to recover its reasonable
206 attorney fees and court costs.

207 (e) Upon transfer of title, all obligation,
208 responsibility, and liability incumbent upon a pole owner in
209 this state including, but not limited to, safety, vegetation
210 management, repair, replacement, maintenance, relocation,
211 removal, emergency response, storm restoration, taxes, and
212 third-party liability, shall immediately become the legal

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213 obligation, responsibility, and liability of the new pole owner.
214 The transferor pole owner is relieved of all such obligation,
215 responsibility, and liability immediately upon transfer of
216 title.

217 (4) The commission shall impose monetary penalties upon
218 any entity subject to its jurisdiction which is found to be in
219 violation of this section. Upon petition by a pole owner, the
220 commission may issue orders requiring the removal or transfer of
221 pole attachments by noncompliant attaching entities and may
222 issue orders resolving disputes between pole owners and
223 attaching entities over the transfer of title of poles or the
224 amount of remaining book value of transferred poles. The
225 commission shall impose monetary penalties in accordance with
226 this section.

227 (5) All monetary penalties assessed by the commission
228 pursuant to this section must be used by the commission to
229 provide grants for the installing and upgrading of broadband
230 infrastructure in unserved and underserved rural and low-income
231 areas of this state. The commission shall establish criteria for
232 the award of grants from the fund to businesses and
233 organizations that have demonstrated the ability to construct
234 and install infrastructure and that have submitted an
235 application and proposal detailing how the grant funds would
236 further the objectives of this subsection to expand broadband
237 services in unserved and underserved areas.

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238 (6) This section may not be construed to do any of the
239 following:

240 (a) Prevent a party at any time from entering into a
241 voluntary agreement authorizing a pole owner to remove an
242 attaching entity's pole attachment. It is the intent of the
243 Legislature to encourage parties to enter into such voluntary
244 agreements without commission approval.

245 (b) Impair the contract rights of a party to a valid pole
246 attachment agreement in existence before the effective date of
247 this act.

248 (7) The commission shall adopt rules by October 1, 2021,
249 to implement this section, including rules providing for the
250 timely and coordinated removal of all pole attachments from
251 redundant poles and establishing monetary penalties to be
252 imposed against any entity in violation of this section.

253 Section 4. The Division of Law Revision is directed to
254 replace the phrase "the effective date of this act" wherever it
255 occurs in this act with the date this act becomes a law.

256 Section 5. This act shall take effect upon becoming a law.

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258

259 **T I T L E A M E N D M E N T**

260 Remove everything before the enacting clause and insert:
261 An act relating to utility and communication service poles;
262 amending s. 366.02, F.S.; defining terms; amending s. 366.04,

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263 F.S.; requiring the Public Service Commission to regulate and
264 enforce rates, charges, terms, and conditions for pole
265 attachments under certain circumstances; providing requirements
266 for such rules; providing construction; providing situations
267 under which a pole owner may deny access to the owner's pole on
268 a nondiscriminatory basis; requiring the commission to hear and
269 resolve complaints concerning rates, charges, terms, conditions,
270 voluntary agreements, and denial of access relative to pole
271 attachments; requiring the commission, at the request of a
272 party, to assume jurisdiction over certain complaints before the
273 Federal Communications Commission; requiring the commission to
274 adopt rules by a specified date; requiring the commission to
275 regulate the safety, vegetation management, repair, replacement,
276 maintenance, relocation, emergency response, and storm
277 restoration requirements for certain plants and equipment of
278 communications services providers; requiring the commission to
279 adopt rules, including monetary penalties, by a specified date;
280 creating s. 366.97, F.S.; providing legislative findings;
281 requiring attaching entities to remove pole attachments from
282 redundant poles within a specified timeframe after receipt of an
283 electronic or written notice from the pole owner; requiring the
284 commission to determine by rule the sufficiency of, and
285 requirements for, such notice; authorizing a pole owner or its
286 agent to transfer or relocate pole attachments of an attaching
287 entity at the entity's expense under certain circumstances;

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288 providing an exception; authorizing a pole owner to remove and
289 sell or dispose of certain pole attachments; requiring that the
290 pole owner and its directors, officers, agents, and employees be
291 held harmless under certain circumstances for such actions;
292 authorizing the commission to require attaching entities to post
293 certain security instruments by rule; authorizing certain pole
294 owners to transfer legal title of a redundant pole to an
295 attaching entity that has not removed a pole attachment within a
296 specified timeframe; providing for such transfer of title;
297 providing for the transfer of obligation, responsibility, and
298 liability of a pole to the new owner upon such a transfer of
299 title; requiring the commission to impose monetary penalties for
300 violations; requiring the commission to provide grants to
301 install and upgrade broadband infrastructure in this state from
302 any monetary penalty collected; providing construction;
303 requiring the commission to adopt rules by a specified date;
304 providing a directive to the Division of Law Revision; providing
305 an effective date.