

Amendment No. 1

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WITHDRAWN _____ (Y/N)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: Commerce Committee
2 Representative DiCeglie offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (g) is added to subsection (13) of
7 section 120.80, Florida Statutes, to read:

8 120.80 Exceptions and special requirements; agencies.—

9 (13) FLORIDA PUBLIC SERVICE COMMISSION.—

10 (g) Rules adopted by the Florida Public Service Commission
11 to implement ss. 366.04(8) and (9) and 366.97 are not subject to
12 s. 120.541.

13 Section 2. Subsections (4) through (9) are added to
14 section 366.02, Florida Statutes, to read:

15 366.02 Definitions.—As used in this chapter:

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

20 (5) "Communications services" has the same meaning as in
21 s. 202.11(1).

22 (6) "Pole" means a pole used for electric distribution
23 service, streetlights, communications services, local exchange
24 services, or cable television services that is owned in whole or
25 in part by a pole owner. The term does not include a pole used
26 solely to support wireless communications services facilities.

27 (7) "Pole attachment" means any attachment by a public
28 utility, local exchange carrier, communications services
29 provider, broadband provider, or cable television operator to a
30 pole, duct, conduit, or right-of-way owned or controlled by a
31 pole owner.

32 (8) "Pole owner" means a local exchange carrier, a public
33 utility, a communications services provider, or a cable
34 television operator that owns a pole.

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

37 (a) Within 50 feet of a new pole which is intended to
38 replace the old pole from which some or all of the pole
39 attachments have not been removed and transferred to the new
40 pole;

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41 (b) Left standing after the pole owner has relocated its
42 facilities to underground but on which pole attachments of other
43 attaching entities remain; or

44 (c) Left standing after a pole owner's attachments have
45 been removed from that route or location to accommodate a new
46 route or design for the delivery of service.

47 Section 3. Subsections (8) and (9) are added to section
48 366.04, Florida Statutes, to read:

49 366.04 Jurisdiction of commission.—

50 (8)(a) The commission shall regulate and enforce rates,
51 charges, terms, and conditions for pole attachments, including
52 the types of attachments regulated under 47 U.S.C. s. 224(a)(4),
53 attachments to streetlight fixtures, attachments to poles owned
54 by a public utility or attachments to poles owned by a
55 communications services provider, to ensure that such rates,
56 charges, terms, and conditions are just and reasonable. The
57 commission's authority under this subsection includes, but is
58 not limited to, the state regulatory authority referenced in 47
59 U.S.C. s. 224(c).

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

64 (c) It is the intent of the Legislature to encourage
65 parties to enter into voluntary pole attachment agreements, and

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66 this subsection may not be construed to prevent parties from
67 voluntarily entering into pole attachment agreements without
68 commission approval.

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

78 (e) The commission shall hear and resolve complaints
79 concerning rates, charges, terms, conditions, voluntary
80 agreements, or any denial of access relative to pole attachments
81 with regard to the types of attachments regulated under 47
82 U.S.C. s. 224, attachments to streetlight fixtures, or
83 attachments owned by a communications services provider. Federal
84 Communications Commission precedent is not binding upon the
85 commission in the exercise of its authority under this
86 subsection. When taking action upon such complaints, the
87 commission shall establish just and reasonable cost-based rates
88 and charges, terms, and conditions, for pole attachments and
89 shall apply the decisions and orders of the Federal
90 Communications Commission and any appellate court decisions

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91 reviewing an order of the Federal Communications Commission
92 regarding pole attachment rates, terms, or conditions in
93 determining just and reasonable pole attachment rates, terms and
94 conditions unless a pole owner or attaching entity establishes
95 by competent substantial evidence pursuant to proceedings
96 conducted pursuant to ss. 120.569 and 120.57 that an alternative
97 cost of service based pole attachment rate is appropriate and in
98 the public interest.

99 (f) In the administration and implementation of this
100 subsection, the commission shall authorize any petitioning pole
101 owner or attaching entity to participate as an intervenor with
102 full party rights under chapter 120 in the first five formal
103 administrative proceedings conducted to determine pole
104 attachment rates under this section. These initial five
105 proceedings are intended to provide commission precedent on the
106 establishment of pole attachment rates by the commission and
107 will help guide negotiations toward voluntary pole attachment
108 agreements. After the fifth such formal administrative
109 proceeding is concluded by final order, parties to subsequent
110 pole attachment rate proceedings shall be limited to the
111 specific pole owner and pole attaching entities involved in and
112 directly affected by the specific pole attachment rate.

113 (g) The commission shall adopt procedural rules by
114 January 1, 2022 to administer and implement this subsection, and
115 shall upon adoption of such rules, provide its certification to

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116 the Federal Communications Commission pursuant to 47 U.S.C. s.
117 224(c)(2).

118 (9)(a) The commission shall regulate the safety, vegetation
119 management, repair, replacement, maintenance, relocation,
120 emergency response, and storm restoration requirements for poles
121 of communication services providers. The provisions of this
122 subsection shall not apply to a communications services provider
123 that owns no poles.

124 (b) The commission shall adopt rules by April 1, 2022, to
125 administer and implement this subsection, including, but not
126 limited to:

127 1. Mandatory pole inspections, including repair or
128 replacement; vegetation management requirements for poles owned
129 by providers of communications services; and

130 2. Monetary penalties to be imposed upon any communications
131 services provider that fails to comply with any such rule of the
132 commission. Monetary penalties imposed by the commission shall
133 be consistent with the provisions of s. 366.095.

134 (c) The commission shall have the authority to access the
135 books and records of communications services providers to the
136 limited extent necessary to perform its functions and to
137 exercise its authority under this subsection, subsection (8),
138 and s. 366.97(4).

139 Section 4. Section 366.97, Florida Statutes, is created to
140 read:

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141 366.97 Redundant poles; transfer of ownership.-

142 (1) The commission by rule shall determine a process by
143 which pole owners shall provider at least 180 calendar days'
144 electronic or written advance notice to affected attaching
145 entities of major hardening projects the purpose of which is to
146 replace poles to ensure the poles meet extreme wind loading
147 requirements. The advance hardening project notice must include:

148 (a) The scope of the major hardening project, to the
149 extent determined the locations of the affected poles, the
150 expected start date and expected completion date of the major
151 hardening project: and

152 (b) The date, time, and location of a field meeting for
153 the pole owner and attaching entities to review and discuss the
154 planned major hardening project details, including the types of
155 replacement poles to be used. The field meeting shall occur no
156 sooner than 15 calendar days after the date of the notice, and
157 no later than 60 calendar days after the notice, and shall at a
158 minimum include sufficient information to enable the attaching
159 entity to locate the affected poles and to identify the owner of
160 any facilities attached to the poles.

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

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166 and may consider the use of a joint use notification software
167 program to accomplish such removal notice

168 (b) If an attaching entity fails to remove a pole
169 attachment pursuant to paragraph (a), except to the extent
170 excused by an event of force majeure or other good cause as
171 determined by the commission, the pole owner or its agent may
172 transfer or relocate the pole attachment to the new pole at the
173 non-compliant attaching entity's expense. This subsection does
174 not apply to an electric utility's pole attachments. An
175 attaching entity shall submit payment to the pole owner within
176 60 days after receipt of the pole owner's invoice. A pole owner
177 may seek to enforce its right to payment under this subsection
178 in circuit court and shall be entitled to prejudgment interest
179 at the prevailing statutory rate and reasonable attorney's fees
180 and court costs. Upon adequate written notice by the pole owner,
181 the noncompliant attaching entity shall indemnify, defend, and
182 hold harmless the pole owner and its directors, officers, agents
183 and employees from and against all liability, except to the
184 extent of any finding of negligence or willful misconduct,
185 including attorneys' fees and litigation costs, arising in
186 connection with the transfer of the pole attachment from a
187 redundant pole to a new pole by the pole owner.

188 (c) If a pole attachment is no longer in use by a
189 noncompliant attaching entity, the pole owner or its agent may
190 remove the pole attachment at the noncompliant attaching

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191 entity's expense and may sell or dispose of the pole attachment,
192 except to the extent the attaching entity's noncompliance is
193 excused by an event of force majeure or other good cause as
194 determined by the commission. An attaching entity shall submit
195 payment to the pole owner within 60 days after receipt of the
196 pole owner's invoice. A pole owner may seek to enforce its right
197 to payment under this subsection in circuit court and shall be
198 entitled to prejudgment interest at the prevailing statutory
199 rate and reasonable attorney's fees and court costs. Upon
200 adequate written notice by the pole owner, the noncompliant
201 attaching entity shall indemnify, defend, and hold harmless the
202 pole owner and its directors, officers, agents, and employees
203 from and against all liability, except to the extent of any
204 finding of negligence or willful misconduct, including attorney
205 fees and litigation costs, arising in connection with the
206 removal, transfer, sale, or disposal of the pole attachments
207 from a redundant pole by the pole owner.

208 (d) The commission may require by rule that an attaching
209 entity post security instruments in favor of pole owners in
210 amounts reasonably sufficient to cover the cost of the removal,
211 transfer, sale, or disposal of pole attachments. The rule shall
212 not apply if an existing agreement between the pole owner and
213 attaching entity expressly provides for, or disclaims, security
214 requirements.

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215 (3) Upon petition by a pole owner, the commission may
216 issue orders requiring the removal or transfer of pole
217 attachments by noncompliant attaching entities.

218 (4) This section may not be construed to do any of the
219 following:

220 (a) Prevent a party at any time from entering into a
221 voluntary agreement authorizing a pole owner to remove an
222 attaching entity's pole attachment. It is the intent of the
223 Legislature to encourage parties to enter into such voluntary
224 agreements without commission approval.

225 (b) Impair the contract rights of a party to a valid pole
226 attachment agreement in existence before the effective date of
227 this act.

228 (5) The commission shall adopt rules by April 1, 2022, to
229 implement this section, including rules providing for the timely
230 and coordinated removal of all pole attachments from redundant
231 poles and establishing monetary penalties to be imposed against
232 any entity in violation of this section.

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

236 Section 5. This act shall take effect upon becoming a law.
237

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

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240 Remove everything before the enacting clause and insert:
241 An act relating to utility and communications poles; amending s.
242 120.80, F.S.; exempting certain rules adopted by the Public
243 Service Commission from legislative ratification requirements;
244 amending s. 366.02, F.S.; defining terms; amending s. 366.04,
245 F.S.; requiring the commission to regulate and enforce rates,
246 charges, terms, and conditions for pole attachments under
247 certain circumstances; providing requirements for such rules;
248 providing construction; providing situations under which a pole
249 owner may deny access to the owner's pole on a nondiscriminatory
250 basis; requiring the commission to hear and resolve complaints
251 concerning rates, charges, terms, conditions, voluntary
252 agreements, and denial of access relative to pole attachments;
253 requiring the commission to establish cost-based rates and
254 charges for pole attachments and apply certain decisions and
255 orders of the Federal Communications Commission; requiring the
256 commission, at the request of a party, to assume jurisdiction
257 over certain complaints before the Federal Communications
258 Commission; requiring the commission to adopt rules by a
259 specified date and provide certification to the Federal
260 Communications Commission upon such adoption; requiring the
261 commission to regulate the safety, vegetation management,
262 repair, replacement, maintenance, relocation, emergency
263 response, and storm restoration requirements for certain plants
264 and equipment of communications services providers; providing an

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265 | exception; requiring the commission to adopt rules, including
266 | monetary penalties, by a specified date; authorizing the
267 | commission to access the books and records of communications
268 | services providers for specified purposes; providing that such
269 | information that contains proprietary confidential business
270 | information retains its confidential or exempt status when held
271 | by the commission; creating s. 366.97, F.S.; requiring the
272 | commission by rule to create a process requiring advance
273 | hardening project notice; requiring attaching entities to remove
274 | pole attachments from redundant poles within a specified
275 | timeframe after receipt of electronic or written notice from the
276 | pole owner; requiring the commission to provide the form and
277 | requirements for such notice by rule; authorizing a pole owner
278 | or its agent to transfer or relocate pole attachments of an
279 | attaching entity at the entity's expense under certain
280 | circumstances; providing an exception; requiring that the pole
281 | owner and its directors, officers, agents, and employees be held
282 | harmless under certain circumstances for such actions;
283 | authorizing a pole owner to remove and sell or dispose of
284 | certain abandoned pole attachments; authorizing the commission
285 | to require attaching entities to post certain security
286 | instruments by rule; requiring the commission to impose monetary
287 | penalties for violations; requiring the commission to provide
288 | grants to construct and install broadband infrastructure in this
289 | state from any monetary penalty collected; providing

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1567 (2021)

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290 construction; requiring the commission to adopt rules by a
291 specified date; providing a directive to the Division of Law
292 Revision; providing an effective date.