

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1567 Utility and Communication Service Poles
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, DiCeglie and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 1 N, As CS	Willson	Keating
2) State Administration & Technology Appropriations Subcommittee	12 Y, 2 N	Lee	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

“Pole attachment” refers to the process by which telecommunications companies can collocate telecommunications infrastructure on existing electric utility poles. Telecommunications companies and electric utilities have an established system of utility poles to carry the wires that move their resources from provider to the consumer. However, telecommunications companies typically own relatively few poles so they often lease space from electric utility pole owners. Historically, rates, terms, and conditions for attachments to municipal and cooperative utility poles have been established through private contracts.

Federal law broadly preempts the regulation of telecommunications services, including pole attachments. However, federal law allows states to exercise reverse preemption over the Federal Communications Commission’s (FCC) jurisdiction over pole attachments.

The bill requires the Florida Public Service Commission (PSC) to regulate pole attachments in Florida, taking over the role currently performed by the FCC. The bill requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. The bill provides that FCC precedent is not binding upon the PSC. Additionally, the bill specifies that the PSC, upon the request of a party to a complaint proceeding pending before the FCC, must assume jurisdiction over the matter if it is not yet subject to a final order of the FCC at the time of the request.

The bill defines “redundant pole” and requires that attaching entities remove their pole attachments from a redundant pole within 180 days of a written request by the pole owner. Under certain circumstances, the pole owner may transfer or relocate the pole attachment to a new pole at the noncompliant attaching entity's expense, unless the pole attachments are owned by an electric utility.

The bill requires the PSC to regulate the maintenance of certain telecommunications infrastructure and requires telecommunications companies to create storm reserve funds overseen by the PSC.

The bill requires the PSC to impose monetary penalties upon any entity that violates the provisions of the bill. Upon petition by a pole owner, the bill authorizes the PSC to resolve disputes or order the removal or transfer of pole attachments by noncompliant attaching entities, and requires the PSC to impose monetary penalties. Revenues collected from these penalties must be used by the PSC to provide broadband infrastructure grants.

The bill requires the PSC to adopt rules by October 1, 2021.

The PSC indicates a fiscal impact to implement the provisions of CS/HB 1567. However, it is expected this can be absorbed within existing resources. See *Fiscal Analysis & Economic Impact Statement*.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Pole Attachments

First deployed in America in 1844 to extend telegraph service, utility poles provide the scaffolding for the technology of the twenty-first century. In the mid-nineteenth and early twentieth centuries, many states adopted laws granting rights-of-way (ROW) to construct utility poles, wires, and facilities to transmit electricity and communications signals. First telegraph, then telephone, electricity, cable, wireless, and Internet Service Providers have sought to attach facilities to wooden, and later steel or composite, utility poles.¹

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.²

Pole attachments, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers (e.g. cable TV, local exchange carriers) with access to a utility's distribution poles, conduits, and ROW for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.³

The space requested for a pole attachment is typically one foot.

Congress began regulating pole attachments⁴ in 1978.⁵ The Telecommunications Act of 1996⁶ expanded pole attachment rights to telecommunications⁷ carriers. The Act requires utilities⁸ to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission⁹ (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.¹⁰ The Legislation withheld from FCC

¹ Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 474–75 (2020).

² American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations> (last visited Mar. 13, 2021).

³ Edison Electric Institute, Pole Attachments 101, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Mar. 13, 2021).

⁴ 47 U.S.C. § 224(a)(4), defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”

⁵ The Pole Attachment Act of 1978 granted utility pole access to cable companies, and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).

⁶ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

⁷ The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).

⁸ 47 U.S.C. § 224(a)(1), defines “utility” as “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.”

⁹ The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States’ primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, <https://www.fcc.gov/about-fcc/what-we-do> (last visited Mar 13, 2021).

¹⁰ 47 U.S.C. § 224.

jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.¹¹

The 1996 Act permits utilities to deny access where there is insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. In addition to establishing a right of access, the Act provides a rate methodology for “attachments used by telecommunications carriers to provide telecommunications services”¹² in addition to the existing methodology for attachments “used by a cable television system solely to provide cable service.”¹³

Federal law broadly preempts the regulation of telecommunications services.¹⁴ However, federal law allows states to exercise reverse preemption over the FCC’s jurisdiction of communications infrastructure access,¹⁵ meaning that once a state adopts its own utility pole access rules, the FCC loses jurisdiction over pole attachments to the extent that the state regulates such matters.¹⁶

Federal law specifically recognizes the authority of state and local governments to manage the public ROW, and to require fair and reasonable compensation for the use of such ROW.¹⁷ The law also provides that states may adopt, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”¹⁸

Pursuant to section 224(c) of the Telecommunications Act of 1996¹⁹, each state that regulates the rates, terms, and conditions for pole attachments must certify to the FCC that:

- It regulates such rates, terms, and conditions; and
- In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services provided by the pole owners.

Furthermore, a state is not considered to regulate the rates, terms, and conditions for pole attachments:

- Unless the state has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments; and
- With respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
 - Within 180 days after the complaint is filed with the state, or
 - Within the applicable period prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

Regulation of Utility Infrastructure in Florida

The Florida Public Service Commission (“PSC” or “commission”) is an arm of the legislative branch of government.²⁰ The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.²¹ In doing so, the PSC exercises regulatory authority over utilities in one or more of

¹¹ *In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011)

¹² 47 U.S.C. § 224(e).

¹³ 47 U.S.C. § 224(d).

¹⁴ “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a).

¹⁵ 47 U.S.C. § 224(c)(1).

¹⁶ Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 *Cath. U. L. Rev.* 473, 486–87 (2020).

¹⁷ 47 U.S.C. § 253(c).

¹⁸ 47 U.S.C. § 253.

¹⁹ 47 U.S.C. § 224(c)

²⁰ s. 350.001, F.S.

²¹ FLA. PUBLIC SERVICE COMMISSION, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Feb. 26, 2021).

three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.²²

The PSC monitors the safety and reliability of the electric power grid²³ and may order the addition or repair of infrastructure as necessary.²⁴ Additionally, the PSC has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida. However, the PSC does not regulate pole attachments or provide construction and reliability standards relating to pole attachments. Additionally, the PSC generally does not regulate providers of communications services,²⁵ cable television operators, local exchange carriers, or streetlight fixtures.

Telecommunications carriers in Florida are subject to limited regulation under ch. 364, F.S. During the 2011 legislative session House Bill CS/CS/HB 1231, the “Regulatory Reform Act” (Act), was passed and signed into law by the Governor, effective July 1, 2011. Under the Act, the Legislature eliminated most of the PSC’s retail oversight authority over the telecommunications wireline companies, yet maintained the PSC’s authority over wholesale intercarrier issues. The Act eliminated most of the retail regulation of local exchange telecommunications services by the PSC, including the elimination of rate caps on all retail telecommunications services, elimination of telecommunications-related consumer protection and assistance duties of the PSC, and elimination of the PSC’s remaining oversight of telecommunications service quality.²⁶

Effect of the Bill

The bill requires the PSC to regulate pole attachments in Florida, taking over the role currently performed by the FCC.

The bill defines the following terms:

- "Attaching entity" means a person that is a local exchange carrier, a public utility,²⁷ a communications services provider, a broadband provider, or a cable television operator who owns or controls pole attachments.
- "Communications services" has the same meaning as in s. 202.11, F.S.
- "Pole" means a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.

²² *Id.* The PSC regulates five investor-owned electric companies, eight investor-owned natural gas utilities, and 151 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations, and planning, over 35 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally owned natural gas utilities and 4 gas districts, and also exercises safety authority over all electric and natural gas systems operating in the state. FLA. PUBLIC SERVICE COMMISSION, 2020 ANNUAL REPORT 14 (2020), <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf>. (last visited Feb. 28, 2021).

²³ S. 366.04(5) & (6), F.S.

²⁴ S. 366.05(1) & (8), F.S.

²⁵ Section 202.11(1), F.S., defines “Communications services” as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: Information services. Installation or maintenance of wiring or equipment on a customer’s premises. The sale or rental of tangible personal property. The sale of advertising, including, but not limited to, directory advertising. Bad check charges. Late payment charges. Billing and collection services. Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.”

²⁶ PSC, *Local Competition* <http://www.psc.state.fl.us/Telecommunication/TelecomLocalCompetition> (last visited Mar. 13, 2021).

²⁷ Section 366.02(1), F.S., defines “Public utility” as “every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.”

- "Pole attachments" means local exchange carrier, electric, communications services, broadband, or cable television facilities attached to a pole by an entity other than the pole owner.
- "Pole owner" means a local exchange carrier, a public utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.
- "Redundant pole" means a pole owned or controlled by a pole owner which is:
 - Within 50 feet of a new pole which is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;
 - Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or
 - Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Regulation of Pole Attachments

In the event that a pole owner is unable to reach an agreement with a party seeking pole attachments, the bill requires the PSC to regulate and enforce rates, charges, terms, and conditions for pole attachments and to ensure that they are just and reasonable. The bill authorizes the PSC to regulate attachments by a cable television system or provider of telecommunications service to investor-owned electric utility poles, attachments to streetlight fixtures, and attachments to poles owned by a communications services provider. The bill clarifies that the Legislature encourages parties to enter into voluntary pole attachment agreements, and that voluntary pole attachment agreements do not require PSC approval.

The bill provides that the PSC's authority to regulate such matters includes, but is not limited to, the state regulatory authority provided under federal law. Additionally, the bill requires the PSC to consider the interests of the subscribers and users of the services offered through pole attachments, as well as the interests of the consumers of any pole owner providing such attachments, when developing such rules.

The bill requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

The bill specifies that a party's right to nondiscriminatory access to a pole is identical to the rights afforded under 47 U.S.C. s. 224(f)(1), and that a pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes.

The bill requires a pole owner to consider relevant construction and reliability standards approved by the PSC when evaluating capacity, safety, reliability, and engineering requirements, as well as the financial and performance-related capabilities of the entity requesting attachment.

The bill provides that FCC precedent is not binding upon the PSC. Additionally, the bill specifies that the PSC, upon the request of a party to a complaint proceeding pending before the FCC, must assume jurisdiction over the matter if it is not yet subject to a final order of the FCC at the time of the request.

The bill requires the PSC to adopt rules by October 1, 2021, to administer and implement these provisions, including one or more appropriate formulae for apportioning costs, and to provide certification to the FCC upon adoption of such rules.

The bill specifies that such requirements may not be construed to:

- Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment.
- Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act.

Regulation of Telecommunications Infrastructure

The bill requires the PSC to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers.

The bill requires communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters.

The bill requires the PSC to adopt rules by October 1, 2021, to administer and implement these provisions, including:

- Mandatory pole inspections, including provisions relating to:
 - repair or replacement;
 - vegetation management requirements for poles owned by providers of communications services;
 - the establishment of storm reserve funds; and
 - the sequential and timely removal of pole attachments.
- Monetary penalties for any communication services provider that fails to comply with such rules.

Redundant Poles

The bill enumerates certain legislative findings, as follows:

- It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to withstand extreme weather conditions, by and among other things, replacing older poles with newer, stronger poles; however, this work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.
- Pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles.
- Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create over-crowding of, and unsafe conditions in, the public rights-of-way and easements.
- It is in the public interest to timely remove pole attachments from redundant poles and to transfer the ownership of poles from pole owners that are no longer using the poles to entities that continue to attach facilities to the poles

The bill requires that attaching entities remove their pole attachments from a redundant pole within 180 days of an electronic or written request by the pole owner, and requires the PSC to determine by rule the sufficiency of, and any related requirements for, such a notice. Absent a force majeure event or other good cause as determined by the PSC, the pole owner may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense, unless the pole attachments are owned by an electric utility. The noncompliant attaching entity must indemnify, defend, and hold harmless the pole owner and its directors, officers, agents and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorneys' fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.

Relating to unused pole attachments, the bill:

- Authorizes the pole owner to remove the pole attachment at the noncompliant attaching entity's expense, unless the PSC finds good cause for noncompliance.
- Authorizes the pole owner to sell or dispose of the pole attachment.
- Requires the noncompliant attaching entity to indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and

litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

In the event that a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground and the attaching entity does not remove their attachments within 180 calendar days of the written notice, unless good cause is found by the PSC, the bill:

- Authorizes a pole owner to transfer legal title of the redundant pole, by operation of law, to an attaching entity.
- Requires the attaching entity to pay the pole owner an amount equal to the total of the remaining book value for all poles,
- Allows the pole owner to enforce their rights in circuit court, and specifies that the prevailing party is entitled to recover attorney fees and court costs.
- Entitles the pole owner to prejudgment interest.

Upon transfer of title, all obligation, responsibility, and liability incumbent upon a pole owner becomes the legal obligation, responsibility, and liability of the new pole owner.

The bill enables the PSC to require, by rule, that an attaching entity post security instruments²⁸ in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

Monetary Penalties

The bill requires the PSC to impose monetary penalties, as defined by rule, upon any entity that violates the provisions of the bill. Although the specifics of the monetary penalties will be outlined by PSC in rule, current law authorizes the PSC to impose and collect a penalty up to \$5,000 per offense per day that an entity willfully violates any lawful rule or order of the PSC.²⁹ Upon petition by a pole owner, the bill authorizes the PSC to order the removal or transfer of pole attachments by noncompliant attaching entities, or issue orders to resolve disputes relating to the transfer of title or the remaining book value of such poles.

The bill specifies that the proceeds of any monetary penalties must be used by the PSC to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The bill requires the PSC to establish criteria for the award of grants from the fund³⁰ to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas.

Rulemaking, Generally

The bill requires the PSC to adopt rules which implement the bill by October 1, 2021, including rules providing for the timely and coordinated removal of all pole attachments from redundant poles and to establish monetary penalties.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 366.02, F.S.; defining terms.

²⁸ A security instrument is a performance bond or an equivalent financial instrument that guarantees payment for certain obligations.

²⁹ S. 366.095, F.S.

³⁰ The bill does not specify the fund from which the collected penalties will be used for broadband infrastructure grants.

- Section 2. Amends s. 366.04, F.S.; relating to jurisdiction of the Public Service Commission.
- Section 3. Creates s. 366.97, F.S.; relating to redundant poles; transfer of ownership; and penalties.
- Section 4. Provides a directive to the Division of Law Revision.
- Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not authorize the PSC to impose new or existing regulatory assessment fees on communications services providers to account for its new regulatory responsibilities over these providers.³¹ However, the bill requires the PSC to impose monetary penalties on entities that do not comply with the provisions of the bill. Current law³² authorizes the PSC to impose a penalty up to \$5,000 per occurrence, per day. Any additional revenues collected by the PSC for penalties imposed under the bill must be used to provide broadband infrastructure grants. Therefore, the bill has no fiscal impact on state revenues.

2. Expenditures:

The bill is likely to have a fiscal impact on the PSC's Regulatory Trust Fund, as the PSC is directed to adopt rules and regulate entirely new matters, including poll attachments, reliability of communications services infrastructure, and broadband infrastructure grants.

The PSC estimates that up to 13 new positions (FTE) and a total of \$925,566 (\$186,123 nonrecurring) in additional budget authority will be needed to implement the bill.³³ A breakdown of the positions and funding is provided below.

Category	Amount
Salaries and Benefits (13 FTE)	\$656,919
- 6 Public Utility Analysts	
- 4 Engineer Specialists	
- 3 Attorneys	
Expense Package: 13 new FTE	\$82,524
Total Recurring Costs	\$739,443
Expense package: 13 new FTE	\$50,635
Other Operating Expenses	\$135,488
- 2 new vehicles	
- Hardware/Application Development	
Total Nonrecurring Costs	\$186,123
Total Costs for FY 2021-22	\$925,566

The PSC currently has a total of 33 vacant positions (FTE), with 22 FTE vacant over 180 days. The annualized amount of these vacancies is approximately \$1.3 million. Current vacancies and historical reversions could offset the need for additional funding for the PSC during FY 2021-22. Therefore, due to the high number of vacant positions and annual reversions averaging

³¹ See s. 364.336, F.S.

³² S. 366.095, F.S.

³³ Email from Peter Queirolo, Budget Analyst, Public Service Commission, RE: PSC Explanation of the Fiscal Impact of HB 1567 (Mar. 22, 2021).

approximately \$1.4 million in budget authority over the last three fiscal years, the PSC will likely be able to handle the workload associated with CS/HB 1567 within existing resources.

Public Service Commission Reversions for the Last 3 Years			
Appropriation Category	FY 17-18	FY 18-19	FY 19-20
Salaries and Benefits	-\$636,278	-\$698,524	-\$982,721
Other Personal Services	-\$43,862	-\$43,666	-\$40,583
Expenses	-\$477,549	-\$419,660	-\$434,576
Operating Capital Outlay	-\$93,805	-\$68,675	-\$12,563
Contracted Services	-\$98,957	-\$85,494	-\$97,867
Other Data Processing Services	-\$7,540	-\$13,780	-\$1,318
Totals	-\$1,357,991	-\$1,329,799	-\$1,569,628

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Depending on the PSC's implementation of its authority over pole attachments under the bill, the financial and legal responsibilities of parties to pole attachment arrangements in Florida could change substantially.

It is likely that the PSC's adoption of rules and implementation of this new authority will involve litigation between the affected parties.

Further, entities with attachments on redundant poles may face negative financial impacts not contemplated in current negotiated pole attachment agreements.

The bill will impose new regulatory expenses on communications service providers that own poles, wires, and other facilities in the state.

D. FISCAL COMMENTS:

The bill requires communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters. PSC is required to adopt rules addressing this provision of the bill. It is anticipated the PSC will handle the rulemaking process within existing resources.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt rules by October 1, 2021. See *Drafting Issues or Other Comments*.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the PSC, upon request by a party to a complaint proceeding pending before the FCC, to take jurisdiction over the matter. This could lead to forum shopping for specific pending complaints and cause additional expenses due to relitigation.

The bill requires the PSC to use the proceeds from certain monetary penalties to provide grants for the installation of infrastructure in certain areas. The PSC will need to create a grant program to implement this section. The PSC does not have experience in implementing grant programs.

The bill requires the PSC to adopt implementing rules by October 1, 2021. While the PSC has control over the timing of proposing a rule, the timing of rule adoption depends on matters outside of its control, including challenges brought by stakeholders.

The new statute created in the bill, s. 366.97, F.S., states the PSC “shall establish criteria for the award of grants from the fund to businesses and organizations” for constructing and installing infrastructure to expand broadband services. It is unclear what fund is being referenced. Chapter 366, F.S., does not specifically define the term “fund”. The PSC can establish a separate account within the Regulatory Trust Fund or submit a Legislative Budget Request in a future legislative session to create a new trust fund to account for revenues received from penalties and grant fund awards authorized in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that “broadband service providers” are also attaching entities.
- Specifies that the Florida Public Service Commission (PSC) “shall” hear and resolve complaints concerning pole attachments.
- Requires the PSC to provide certification to the Federal Communications Commission upon the adoption of certain rules.
- Removes a liability provision for pole owners relating to unused poles.
- Increases the time for an attaching entity to remove its pole attachments from 90 to 180 days.
- Clarifies that certain notices may be sent electronically.
- Provides an exception for certain actions for good cause as determined by the PSC.
- Authorizes the PSC to issue orders involving certain disputes between pole owners and attaching entities.

The staff analysis has been updated to reflect the committee substitute.