

1 A bill to be entitled
2 An act relating to utility and communication service
3 poles; amending s. 366.02, F.S.; defining terms;
4 amending s. 366.04, F.S.; requiring the Public Service
5 Commission to regulate and enforce rates, charges,
6 terms, and conditions for pole attachments under
7 certain circumstances; providing requirements for such
8 rules; providing construction; providing situations
9 under which a pole owner may deny access to the
10 owner's pole on a nondiscriminatory basis; authorizing
11 the commission to hear and resolve complaints
12 concerning rates, charges, terms, conditions,
13 voluntary agreements, and denial of access relative to
14 pole attachments; requiring the commission, at the
15 request of a party, to assume jurisdiction over
16 certain complaints before the Federal Communications
17 Commission; requiring the commission to adopt rules by
18 a specified date; requiring the commission to regulate
19 the safety, vegetation management, repair,
20 replacement, maintenance, relocation, emergency
21 response, and storm restoration requirements for
22 certain plants and equipment of communications
23 services providers; requiring the commission to adopt
24 rules, including monetary penalties, by a specified
25 date; creating s. 366.97, F.S.; providing legislative

26 findings; requiring attaching entities to remove pole
27 attachments from redundant poles within a specified
28 timeframe after receipt of a written notice from the
29 pole owner; requiring the commission to provide the
30 form and requirements for such notice; authorizing a
31 pole owner or its agent to transfer or relocate pole
32 attachments of an attaching entity at the entity's
33 expense under certain circumstances; providing an
34 exception; authorizing a pole owner to remove and sell
35 or dispose of certain abandoned pole attachments;
36 requiring that the pole owner and its directors,
37 officers, agents, and employees be held harmless under
38 certain circumstances for such actions; authorizing
39 the commission to require attaching entities to post
40 certain security instruments by rule; authorizing
41 certain pole owners to transfer legal title of a
42 redundant pole to an attaching entity that has not
43 removed a pole attachment within a specified
44 timeframe; providing for such transfer of title;
45 providing for the transfer of obligation,
46 responsibility, and liability of a pole to the new
47 owner upon such a transfer of title; requiring the
48 commission to impose monetary penalties for
49 violations; requiring the commission to provide grants
50 to install and upgrade broadband infrastructure in

51 this state from any monetary penalty collected;
52 providing construction; requiring the commission to
53 adopt rules by a specified date; providing a directive
54 to the Division of Law Revision; providing an
55 effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:

58
59 Section 1. Subsection (4) through (9) are added to section
60 366.02, Florida Statutes, to read:

61 366.02 Definitions.—As used in this chapter:

62 (4) "Attaching entity" means a person that is a local
63 exchange carrier, a public utility or an electric utility, a
64 communications services provider, or a cable television operator
65 who owns or controls pole attachments.

66 (5) "Communications services" has the same meaning as in
67 s. 202.11.

68 (6) "Pole" means a pole, duct, conduit, or right-of-way
69 that is used for wire or wireless communications or electricity
70 distribution and that is owned in whole or in part by a pole
71 owner, or a streetlight fixture that is owned in whole or in
72 part by a public utility.

73 (7) "Pole attachments" means local exchange carrier,
74 electric, communications services, or cable television
75 facilities attached to a pole by an entity other than the pole

76 owner.

77 (8) "Pole owner" means a local exchange carrier, a public
 78 utility or an electric utility, a communications services
 79 provider, a cable television operator, or other public utility
 80 which owns a pole used in whole or in part, for electrical
 81 purposes or for any wire or wireless communications.

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

84 1. Within 50 feet of a new pole which is intended to
 85 replace the old pole from which some or all of the pole
 86 attachments have not been removed and transferred to the new
 87 pole;

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

91 3. Left standing after a pole owner's attachments have
 92 been removed from that route or location to accommodate a new
 93 route or design for the delivery service.

94
 95 Section 2. Subsections (8) and (9) are added to section
 96 366.04, Florida Statutes, to read:

97 366.04 Jurisdiction of commission.—

98 (8)(a) The commission shall regulate and enforce rates,
 99 charges, terms, and conditions for pole attachments in
 100 situations in which a pole owner is unable to reach an agreement

101 with a party seeking pole attachments, including the types of
102 attachments regulated under 47 U.S.C. s. 224(a)(4), attachments
103 to streetlight fixtures, or attachments to poles owned by a
104 communications services provider, to ensure that such rates,
105 charges, terms, and conditions are just and reasonable. The
106 commission's authority under this subsection includes, but is
107 not limited to, the state regulatory authority referenced in 47
108 U.S.C. s. 224(c).

109 (b) In developing the rules, the commission shall consider
110 the interests of the subscribers and users of the services
111 offered through such pole attachments, as well as the interests
112 of the consumers of any pole owner providing such attachments.

113 (c) It is the intent of the Legislature to encourage
114 parties to enter into voluntary pole attachment agreements, and
115 this subsection may not be construed to prevent parties from
116 voluntarily entering into pole attachment agreements, without
117 commission approval.

118 (d) A party's right to nondiscriminatory access to a pole
119 under this subsection is identical to the rights afforded under
120 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its
121 poles on a nondiscriminatory basis when there is insufficient
122 capacity, for reasons of safety and reliability, and when
123 required by generally applicable engineering purposes. A pole
124 owner's evaluation of capacity, safety, reliability, and
125 engineering requirements must consider relevant construction and

126 reliability standards approved by the commission, and may
127 include an evaluation of the financial and performance-related
128 capabilities of the entity requesting attachment.

129 (e) The commission may hear and resolve complaints
130 concerning rates, charges, terms, conditions, voluntary
131 agreements, or any denial of access relative to pole attachments
132 with regard to the types of attachments regulated under 47
133 U.S.C. s. 224, attachments to streetlight fixtures, or
134 attachments owned by a communications services provider. Federal
135 Communications Commission precedent is not binding upon the
136 commission in the exercise of its authority under this
137 subsection.

138 (f) Upon commencement of its authority under this
139 subsection, the commission, upon the request of a party to a
140 complaint proceeding pending before the Federal Communications
141 Commission, shall assume jurisdiction over the matter if it is
142 not yet subject to a final order of the Federal Communications
143 Commission at the time of the request.

144 (g) The commission shall adopt rules by October 1, 2021,
145 to administer and implement this subsection, including one or
146 more appropriate formulae for apportioning costs.

147 (9) (a) The commission shall regulate the safety,
148 vegetation management, repair, replacement, maintenance,
149 relocation, emergency response, and storm restoration
150 requirements for poles, conduits, ducts, pipes, pole

151 attachments, wires, cables, and related plant and equipment of
152 communication services providers. The commission shall require
153 communications services providers to establish storm reserve
154 funds for the repair and replacement of facilities after natural
155 disasters.

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

159 1. Mandatory pole inspections, including repair or
160 replacement; vegetation management requirements for poles owned
161 by providers of communications services; the establishment of
162 storm reserve funds; and the sequential and timely removal of
163 pole attachments; and

164 2. Monetary penalties to be imposed upon any communication
165 services provider that fails to comply with any such rule of the
166 commission.

167 Section 3. Section 366.97, Florida Statutes, is created to
168 read:

169 366.97 Redundant poles; transfer of ownership; penalties.—

170 (1) The Legislature finds that:

171 (a) It is in the public interest for public utilities,
172 communications services providers, and cable television
173 operators that own poles to harden their infrastructure to
174 strengthen the ability of their above-ground infrastructure to
175 withstand extreme weather conditions, by and among other things,

176 replacing older poles with newer, stronger poles; however, this
177 work combined with the undergrounding of electrical facilities
178 may result in redundant poles within public rights-of-way and
179 easements for significant durations because owners of third-
180 party pole attachments may not keep pace in removing their
181 facilities from the old poles.

182 (b) Pole owners that set new poles are prevented from
183 removing redundant poles when the pole attachments of other
184 entities remain on the old poles. Such pole owners continue to
185 incur liability as owners of poles they no longer use or want,
186 but which continue to be used by other entities.

187 (c) Redundant poles in the public rights-of-way and
188 easements are aesthetically unappealing and potentially create
189 over-crowding of, and unsafe conditions in, the public rights-
190 of-way and easements.

191 (d) It is in the public interest to timely and
192 sequentially remove pole attachments from redundant poles and to
193 transfer the ownership of poles from pole owners that are no
194 longer using the poles to entities that continue to attach
195 facilities to the poles.

196 (2) (a) An attaching entity must remove its pole
197 attachments from a redundant pole within 90 calendar days after
198 receipt of written notice from the pole owner requesting such
199 removal. The commission shall provide the form and requirements
200 for such notice.

201 (b) If an attaching entity fails to remove a pole
202 attachment pursuant to paragraph (a), except to the extent
203 excused by an event of force majeure or other good cause as
204 determined by the commission, the pole owner or its agent may
205 transfer or relocate the pole attachment to the new pole at the
206 non-compliant attaching entity's expense. This subsection does
207 not apply to an electric utility's pole attachments.

208 (c) If a pole attachment is abandoned or no longer in use
209 by a noncompliant attaching entity, the pole owner or its agent
210 may remove the pole attachment at the noncompliant attaching
211 entity's expense and may sell or dispose of the pole attachment.
212 The noncompliant attaching entity shall indemnify, defend, and
213 hold harmless the pole owner and its directors, officers,
214 agents, and employees from and against all liability, except to
215 the extent of any finding of gross negligence or willful
216 misconduct, including attorney fees and litigation costs,
217 arising in connection with the removal, transfer, sale, or
218 disposal of the pole attachments from a redundant pole by the
219 pole owner.

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

224 (3) (a) When a pole owner removes and relocates its
225 overhead facilities or converts its overhead facilities to

226 underground, in lieu of removal, transfer, sale, or disposal of
227 the pole attachments as provided in subsection (2), the pole
228 owner may transfer legal title of the redundant pole to an
229 attaching entity that has not removed a pole attachment within
230 90 days after receipt of a notice to remove.

231 (b) Transfer of title shall occur by operation of law upon
232 the date a written notice of title transfer is sent by the pole
233 owner. The notice of title transfer must include pole
234 identification numbers, if applicable, and must describe with
235 specificity the locations of the pole or poles to be transferred
236 and their corresponding remaining book value.

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

241 (d) A transferor pole owner may seek to enforce its rights
242 under this subsection, including its right to payment, in the
243 circuit court in whose jurisdiction the transferred poles are
244 located. The transferor pole owner is entitled to prejudgment
245 interest at the prevailing statutory rate and the prevailing
246 party in any such action is entitled to recover its reasonable
247 attorney fees and court costs.

248 (e) Upon transfer of title, all obligation,
249 responsibility, and liability incumbent upon a pole owner in
250 this state including, but not limited to, safety, vegetation

251 management, repair, replacement, maintenance, relocation,
252 removal, emergency response, storm restoration, taxes, and
253 third-party liability, shall immediately become the legal
254 obligation, responsibility, and liability of the new pole owner.
255 The transferor pole owner is relieved of all such obligation,
256 responsibility, and liability immediately upon transfer of
257 title.

258 (4) The commission shall impose monetary penalties upon
259 any entity subject to its jurisdiction which is found to be in
260 violation of this section. Upon petition by a pole owner, the
261 commission may issue orders requiring the removal or transfer of
262 pole attachments by noncompliant attaching entities and shall
263 impose monetary penalties in accordance with this section.

264 (5) All monetary penalties assessed by the commission
265 pursuant to this section must be used by the commission to
266 provide grants for the installing and upgrading of broadband
267 infrastructure in unserved and underserved rural and low-income
268 areas of this state. The commission shall establish criteria for
269 the award of grants from the fund to businesses and
270 organizations that have demonstrated the ability to construct
271 and install infrastructure and that have submitted an
272 application and proposal detailing how the grant funds would
273 further the objectives of this subsection to expand broadband
274 services in unserved and underserved areas.

275 (6) This section may not be construed to do any of the

276 following:

277 (a) Prevent a party at any time from entering into a
278 voluntary agreement authorizing a pole owner to remove an
279 attaching entity's pole attachment. It is the intent of the
280 Legislature to encourage parties to enter into such voluntary
281 agreements without commission approval.

282 (b) Impair the contract rights of a party to a valid pole
283 attachment agreement in existence before the effective date of
284 this act.

285 (7) The commission shall adopt rules by October 1, 2021,
286 to implement this section, including rules providing for the
287 sequential removal of all pole attachments from redundant poles
288 and establishing monetary penalties to be imposed against any
289 entity in violation of this section.

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

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