A bill to be entitled
An act relating to utility and communication service
poles; amending s. 366.02, F.S.; defining terms;
amending s. 366.04, F.S.; requiring the Public Service
Commission to regulate and enforce rates, charges,
terms, and conditions for pole attachments under
certain circumstances; providing requirements for such
rules; providing construction; providing situations
under which a pole owner may deny access to the
owner's poles on a nondiscriminatory basis; requiring
the commission to hear and resolve complaints
concerning rates, charges, terms, conditions,
voluntary agreements, and denial of access relative to
pole attachments; requiring the commission, at the
request of a party, to assume jurisdiction over
certain complaints before the Federal Communications
Commission; requiring the commission to adopt rules by
a specified date; requiring the commission to regulate
the safety, vegetation management, repair,
replacement, maintenance, relocation, emergency
response, and storm restoration requirements for
certain plants and equipment of communications
services providers; requiring the commission to adopt
rules, including monetary penalties, by a specified
date; creating s. 366.97, F.S.; providing legislative
findings; requiring attaching entities to remove their pole attachments from redundant poles within a specified timeframe after receipt of electronic or written notice from the pole owner; requiring the commission to determine by rule the sufficiency of, and requirements for, such notice; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; authorizing a pole owner or its agent to remove and sell or dispose of certain pole attachments; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing the commission to require by rule attaching entities to post certain security instruments; authorizing certain pole owners to transfer legal title of a redundant pole to an attaching entity that has not removed a pole attachment within a specified timeframe; providing for such transfer of title; providing for the transfer of obligation, responsibility, and liability of a pole owner to the new pole owner upon such a transfer of title; requiring the commission to impose monetary penalties for violations; requiring the commission to
provide grants to install and upgrade broadband
infrastructure in specified areas of this state from
any monetary penalties collected; providing
construction; requiring the commission to adopt rules
by a specified date; providing a directive to the
Division of Law Revision; providing an effective date.

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

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

366.02 Definitions.—As used in this chapter:

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

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

(6) "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.

(7) "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.

(8) "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.

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

(a) 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;

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

(c) 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.

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

366.04 Jurisdiction of commission.—

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

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

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

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). 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. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and
reliability standards approved by the commission, and may
include an evaluation of the financial and performance-related
capabilities of the entity requesting attachment.

(e) The commission shall hear and resolve complaints
concerning rates, charges, terms, conditions, voluntary
agreements, or any denial of access relative to the type of pole
attachments regulated under 47 U.S.C. s. 224(a)(4), attachments
to streetlight fixtures, or attachments to poles owned by a
communications services provider. Federal Communications
Commission precedent is not binding upon the commission in the
exercise of its authority under this subsection.

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

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

(9)(a) The commission shall 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
communications services providers. The commission shall require
communications services providers to establish storm reserve
funds for the repair and replacement of facilities after natural
disasters.
(b) The commission shall adopt rules by October 1, 2021,
to administer and implement this subsection, including, but not
limited to:
1. Mandatory pole inspections, including repair or
replacement; vegetation management requirements for poles owned
by communications services providers; the establishment of storm
reserve funds; and the timely removal of pole attachments; and
2. Monetary penalties to be imposed upon any
communications services provider that fails to comply with any
such rule of the commission.
Section 3. Section 366.97, Florida Statutes, is created to
read:
366.97 Redundant poles; transfer of ownership; penalties.—
(1) The Legislature finds that:
(a) 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.

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

(c) Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create overcrowding of, and unsafe conditions in, the public rights-of-way and easements.

(d) 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.

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

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent
excused in the event of a force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments. The noncompliant attaching entity shall 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, and must reimburse the pole owner for its attorney fees and court costs arising in connection with the transfer or relocation of the pole attachment from a redundant pole to a new pole.

(c) If a pole attachment is no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment, except to the extent the noncompliance is excused in the event of a force majeure or other good cause as determined by the commission. The noncompliant attaching entity shall 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, and must reimburse the pole owner for its attorney fees and court costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments.
(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

(3)(a) When a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground, in lieu of removal, transfer, sale, or disposal of the pole attachments as provided in subsection (2), the pole owner may transfer legal title of the redundant pole to an attaching entity that has not removed a pole attachment within 180 calendar days after receipt of a notice to remove, except to the extent excused in the event of a force majeure or other good cause as determined by the commission.

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

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

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

(e) Upon transfer of title, all obligation,
responsibility, and liability incumbent upon a pole owner in
this state, including, but not limited to, safety, vegetation
management, repair, replacement, maintenance, relocation,
removal, emergency response, storm restoration, taxes, and
third-party liability, shall immediately become the legal
obligation, responsibility, and liability of the new pole owner.
The transferor pole owner is relieved of all such obligation,
responsibility, and liability immediately upon transfer of
title.

(4) The commission shall impose monetary penalties upon
any entity subject to its jurisdiction which is found to be in
violation of this section. Upon petition by a pole owner, the
commission may issue orders requiring the removal or transfer of
pole attachments by noncompliant attaching entities and may
issue orders resolving disputes between pole owners and
attaching entities over the transfer of title of poles or the
amount of remaining book value of transferred poles. The
commission shall impose monetary penalties in accordance with
(5) All monetary penalties assessed and collected by the commission pursuant to this section must be used by the commission to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The commission shall establish criteria for the award of grants from the fund 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.

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

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

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

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

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

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