

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

51 provide grants to install and upgrade broadband
 52 infrastructure in specified areas of this state from
 53 any monetary penalties collected; providing
 54 construction; requiring the commission to adopt rules
 55 by a specified date; providing a directive to the
 56 Division of Law Revision; providing an effective date.

57

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

59

60 Section 1. Subsection (4) through (9) are added to section
 61 366.02, Florida Statutes, to read:

62 366.02 Definitions.—As used in this chapter:

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

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

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

74 (7) "Pole attachments" means local exchange carrier,
 75 electric, communications services, broadband, or cable

76 | television facilities attached to a pole by an entity other than
 77 | the pole owner.

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

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

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

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

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

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 pole attachments regulated under 47 U.S.C. s. 224(a)(4),
103 attachments to streetlight fixtures, or attachments to poles
104 owned by a communications services provider, to ensure that such
105 rates, charges, terms, and conditions are just and reasonable.
106 The commission's authority under this subsection includes, but
107 is not limited to, the state regulatory authority referenced in
108 47 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 shall hear and resolve complaints
130 concerning rates, charges, terms, conditions, voluntary
131 agreements, or any denial of access relative to the type of pole
132 attachments regulated under 47 U.S.C. s. 224(a)(4), attachments
133 to streetlight fixtures, or attachments to poles owned by a
134 communications services provider. Federal Communications
135 Commission precedent is not binding upon the commission in the
136 exercise of its authority under this subsection.

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

143 (g) The commission shall adopt rules by October 1, 2021,
144 to administer and implement this subsection, including one or
145 more appropriate formulae for apportioning costs, and shall,
146 upon adoption of such rules, provide certification to the
147 Federal Communications Commission pursuant to 47 U.S.C. s.
148 224(c)(2).

149 (9) (a) The commission shall regulate the safety,
150 vegetation management, repair, replacement, maintenance,

151 relocation, emergency response, and storm restoration
152 requirements for poles, conduits, ducts, pipes, pole
153 attachments, wires, cables, and related plant and equipment of
154 communications services providers. The commission shall require
155 communications services providers to establish storm reserve
156 funds for the repair and replacement of facilities after natural
157 disasters.

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

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

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

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

170 366.97 Redundant poles; transfer of ownership; penalties.-

171 (1) The Legislature finds that:

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

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

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

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

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

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

199 (b) If an attaching entity fails to remove a pole
200 attachment pursuant to paragraph (a), except to the extent

201 excused in the event of a force majeure or other good cause as
 202 determined by the commission, the pole owner or its agent may
 203 transfer or relocate the pole attachment to the new pole at the
 204 noncompliant attaching entity's expense. This subsection does
 205 not apply to an electric utility's pole attachments. The
 206 noncompliant attaching entity shall indemnify, defend, and hold
 207 harmless the pole owner and its directors, officers, agents, and
 208 employees from and against all liability, except to the extent
 209 of any finding of gross negligence or willful misconduct, and
 210 must reimburse the pole owner for its attorney fees and court
 211 costs arising in connection with the transfer or relocation of
 212 the pole attachment from a redundant pole to a new pole.

213 (c) If a pole attachment is no longer in use by a
 214 noncompliant attaching entity, the pole owner or its agent may
 215 remove the pole attachment at the noncompliant attaching
 216 entity's expense and may sell or dispose of the pole attachment,
 217 except to the extent the noncompliance is excused in the event
 218 of a force majeure or other good cause as determined by the
 219 commission. The noncompliant attaching entity shall indemnify,
 220 defend, and hold harmless the pole owner and its directors,
 221 officers, agents, and employees from and against all liability,
 222 except to the extent of any finding of gross negligence or
 223 willful misconduct, and must reimburse the pole owner for its
 224 attorney fees and court costs, arising in connection with the
 225 removal, transfer, sale, or disposal of the pole attachments

226 from a redundant pole.

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

231 (3) (a) When a pole owner removes and relocates its
232 overhead facilities or converts its overhead facilities to
233 underground, in lieu of removal, transfer, sale, or disposal of
234 the pole attachments as provided in subsection (2), the pole
235 owner may transfer legal title of the redundant pole to an
236 attaching entity that has not removed a pole attachment within
237 180 calendar days after receipt of a notice to remove, except to
238 the extent excused in the event of a force majeure or other good
239 cause as determined by the commission.

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

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

250 (d) A transferor pole owner may seek to enforce its rights

251 under this subsection, including its right to payment, in the
252 circuit court in whose jurisdiction the transferred poles are
253 located. The transferor pole owner is entitled to prejudgment
254 interest at the prevailing statutory rate and the prevailing
255 party in any such action is entitled to recover its reasonable
256 attorney fees and court costs.

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

267 (4) The commission shall impose monetary penalties upon
268 any entity subject to its jurisdiction which is found to be in
269 violation of this section. Upon petition by a pole owner, the
270 commission may issue orders requiring the removal or transfer of
271 pole attachments by noncompliant attaching entities and may
272 issue orders resolving disputes between pole owners and
273 attaching entities over the transfer of title of poles or the
274 amount of remaining book value of transferred poles. The
275 commission shall impose monetary penalties in accordance with

276 this section.

277 (5) All monetary penalties assessed and collected by the
 278 commission pursuant to this section must be used by the
 279 commission to provide grants for the installing and upgrading of
 280 broadband infrastructure in unserved and underserved rural and
 281 low-income areas of this state. The commission shall establish
 282 criteria for the award of grants from the fund to businesses and
 283 organizations that have demonstrated the ability to construct
 284 and install infrastructure and that have submitted an
 285 application and proposal detailing how the grant funds would
 286 further the objectives of this subsection to expand broadband
 287 services in unserved and underserved areas.

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

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

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

298 (7) The commission shall adopt rules by October 1, 2021,
 299 to implement this section, including rules providing for the
 300 timely and coordinated removal of all pole attachments from

301 redundant poles and establishing monetary penalties to be
302 imposed against any entity in violation of this section.

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

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