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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
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The Committee on Finance and Tax (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 141 - 279
and insert:
existed on July 1, 2021, except as authorized by this section
and agreed to by the parties.

(2) As used in this section, the term:

(a) "Attachment" means a wire or cable affixed to a utility
pole or structure in the communications space or in a duct,
conduit, or right-of-way owned or controlled by a municipal



11 electric utility.

12 (b) "Broadband provider" means a person who provides fixed,
13 terrestrial broadband service. The term includes a person who
14 provides or offers additional services to the public in addition
15 to broadband service.

16 (c) "Broadband service" means a service that provides high-
17 speed access to the Internet at a rate of at least 25 megabits
18 per second in the downstream direction and at least 3 megabits
19 per second in the upstream direction.

20 (d) "Communications space" means the lower usable space on
21 a utility pole which is typically reserved for low-voltage
22 communications equipment.

23 (e) "Complex make-ready work" means transfers and work
24 within the communications space which would be reasonably likely
25 to cause a service outage or facility damage, including work
26 such as splicing of any communication attachment or relocation
27 of existing wireless attachments. The term includes any and all
28 wireless activities, including those involving mobile, fixed,
29 and point-to-point wireless communications and wireless service
30 providers, and any work involving the space above the safety
31 space as defined in the National Electrical Safety Code.

32 (f) "Larger order" means a pole attachment application
33 requesting access to a number of poles greater than the lesser
34 of 300 poles or 0.5 percent of a municipal electric utility's
35 poles, and up to the lesser of 3,000 poles or 5 percent of the
36 municipal electric utility's poles. For purposes of determining
37 whether a request is a larger order, a municipal electric
38 utility may treat multiple requests from a single new attacher
39 as one request when the requests are filed within 30 days of one



40 another.

41 (g) "Make-ready work" means engineering or construction
42 activities necessary to make a pole or similar structure
43 available for a new pole attachment or pole attachment
44 modification, including, but not limited to, rearrangement,
45 removal, and replacement of the pole, transfers, and other work
46 incident thereto.

47 (h) "Redundant pole" means a utility pole designated for
48 removal from which the municipal electric utility has removed
49 its facilities and provided written notice to the broadband
50 service provider that the provider needs to remove its
51 facilities.

52 (i) "Simple make-ready work" means work in the
53 communications space to accommodate a new pole attachment on a
54 pole which can be conducted without any reasonable expectation
55 of a:

- 56 1. Service outage or facility damage;
57 2. Need to splice an existing communications attachment; or
58 3. Need to relocate an existing wireless attachment.

59 (j) "Utility pole" means a pole owned or controlled by a
60 municipal electric utility which is used in whole or in part for
61 electric distribution.

62 (3) To promote the deployment of broadband service to all
63 residents, each municipal electric utility shall:

64 (a) Charge just, reasonable, and nondiscriminatory rates
65 for access to any utility pole it owns or operates which do not
66 discriminate between or among such providers and any other
67 attaching entity, including any entity affiliated with the
68 municipal electric utility, regardless of the services



69 furnished. Except as provided in subsection (4), such rates may
70 not exceed the rate calculated consistent with 47 U.S.C. 224(d)
71 and any Federal Communications Commission regulations and
72 decisions adopted thereunder as such regulations and decisions
73 existed on July 1, 2021.

74 (b) Maintain and make available to a broadband provider all
75 records necessary to calculate the rate it charges to the
76 provider in accordance with paragraph (a).

77 (c) Provide broadband providers with access to any utility
78 pole it owns or operates and adopt just, reasonable, and
79 nondiscriminatory terms and conditions for such access
80 consistent with the requirements applicable to investor-owned
81 utilities under 47 U.S.C. s. 224 and any Federal Communications
82 Commission regulations and decisions adopted thereunder, as such
83 regulations and decisions existed on July 1, 2021, except as
84 otherwise provided in this section and agreed to by the parties.
85 Notwithstanding the foregoing:

86 1. If necessary to accommodate a broadband provider's new
87 attachment, the municipal electric utility shall rearrange,
88 expand, replace, or otherwise safely reengineer any utility pole
89 upon the request of the broadband provider.

90 2. If the municipal electric utility is required to replace
91 a utility pole pursuant to subparagraph 1., the municipal
92 electric utility may require a broadband provider to reimburse
93 reasonable costs attributable solely to the new attachment.
94 Broadband providers may not be required to pay for the cost of
95 utility betterment or for costs attributable to preexisting
96 noncompliance.

97 (4) A municipal electric utility may require a broadband



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98 provider to enter into a pole attachment agreement to attach to
99 a utility pole the municipal electric utility owns or operates,
100 and the parties shall negotiate such agreements in good faith.

101 (a) Broadband providers and municipal electric utilities
102 shall negotiate in good faith to adopt pole attachment
103 agreements consistent with this section or to amend existing
104 agreements to ensure that attachments installed after July 1,
105 2021, are performed consistent with the terms of this section.
106 The parties must negotiate in good faith for at least 60 days
107 after receipt of a written request, after which either party may
108 petition the circuit court to determine rates, terms, and
109 conditions for the agreements consistent with this section.

110 (b) A municipal utility may not require a broadband
111 provider to comply with any utility pole attachment
112 specifications except as provided in this section.

113 1. A municipal electric utility may adopt publicly
114 available, reasonable, and nondiscriminatory safety and
115 engineering standards for the protection of public health,
116 safety, or welfare applicable to attachments to the municipal
117 electric utility's poles.

118 2. Safety and engineering standards adopted pursuant to
119 this section may not exceed the specifications in the National
120 Electrical Safety Code, applicable fire safety codes, or any
121 building code or publicly available, reasonable, and
122 nondiscriminatory municipal electric utility safety and
123 engineering standards for the protection of public health,
124 safety, or welfare adopted before the broadband provider filed a
125 utility pole attachment application.

126 (5) If a broadband provider does not request to use one-



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127 touch, make-ready procedures pursuant to subsection (6), or if
128 such procedures are unavailable due to the nature of the make-
129 ready work required to accommodate a broadband provider's
130 attachment, a municipal electric utility and broadband provider
131 shall conduct the pole access process as provided under this
132 subsection.

133 (a) An application is deemed complete if the municipal
134 electric utility does not respond within 10 business days or if
135 the response does not specify any reasons why the application is
136 incomplete. Preconstruction surveys and engineering must be
137 completed within 45 days or within 60 days for larger orders.

138 (b) If a municipal electric utility grants a pole
139 attachment application that requires make-ready work, the
140 municipal electric utility shall identify any make-ready work
141 necessary to accommodate the proposed pole attachment, on a
142 pole-by-pole basis if requested, along with a cost estimate,
143 within 15 days after the date of approval of the pole attachment
144 application. A municipal electric utility may withdraw an
145 outstanding estimate beginning 15 days after the estimate is
146 presented except that such time must be tolled during any good
147 faith negotiation concerning the estimate cost or timing.

148 (c) Upon receipt of payment of the estimate, a municipal
149 electric utility shall immediately notify in writing all known
150 entities with existing attachments which may be affected by the
151 make-ready work.

152 (d)1. Except as provided in paragraph (e), make-ready work
153 must be commenced within 20 business days after the date the
154 applicant made payment for the make-ready work estimate, and
155 must be completed in a timely manner, at a reasonable cost, and



156 as reasonably practicable, but not later than:
157 a. For applications requesting attachment to the lesser of
158 300 poles or 0.5 percent of the electric utility's poles in any
159 30-day period, 30 days or 90 days for attachments above the
160 communications space.
161 b. For larger orders, 75 days or 105 days for attachments
162 above the safety space.
163 2. If an application seeks attachment to a number of poles
164 exceeding a larger order, the parties shall negotiate a
165 reasonable timeframe for completion of the make-ready work
166 covered by the application.
167 (e) A municipal electric utility may deviate from the
168 timelines set forth in paragraph (d) if the parties otherwise
169 agree in their pole attachment agreement, or for good and
170 sufficient cause that renders it infeasible to complete the
171 make-ready work within the time limits set forth in this
172 section, including incidents of natural disasters and
173 emergencies.
174 (f) If a municipal electric utility or any existing
175 attachers fail to complete a survey necessary to the review of
176 an application or to complete make-ready work within the times
177 specified in this section, a broadband provider may hire a
178 contractor to perform such survey or make-ready work.
179 (g) A new attacher shall provide the affected municipal
180 electric utility and existing attachers with advance notice of
181 not less than 5 days of the impending make-ready work and within
182 15 days after completion of make-ready work on a particular
183 pole. The municipal electric utility and affected existing
184 attachers shall inspect the make-ready work within 90 days after



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185 receipt of notice.

186 (h) The new attacher shall notify an affected utility or
187 existing attacher immediately if make-ready work damages the
188 equipment of a utility or an existing attacher or causes an
189 outage that is reasonably likely to interrupt the service of a
190 utility or an existing attacher. Upon notice or discovery of
191 damage or noncompliance caused by the new attacher, the utility
192 or existing attacher may either:

193 1. Complete any necessary remedial work and bill the new
194 attacher for the reasonable costs related to fixing the damage;
195 or

196 2. Require the new attacher to fix the damage at its
197 expense immediately following notice from the utility or
198 existing attacher.

199 (6) A broadband provider seeking a new pole attachment may
200 elect to invoke the Florida one-touch, make-ready (FOTMR)
201 process pursuant to this subsection.

202 (a) Any FOTMR pole attachment application must identify the
203 make-ready work to be performed and must state that the make-
204 ready work required for every utility pole in the application
205 does not require anything more than simple make-ready work. It
206 is the responsibility of the broadband provider to ensure that
207 the make-ready work requested in an attachment application is
208 simple make-ready work and not complex make-ready work.

209 (b) A municipal electric utility shall review a new FOTMR
210 pole attachment application for completeness. An application is
211 deemed complete if the municipal electric utility does not
212 respond within 10 business days after receipt of the application
213 or if the response does not specify any reasons why the



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214 application is incomplete.

215 (c) A municipal electric utility shall review a completed
216 application requesting FOTMR and respond to the applicant either
217 granting or denying an application within 15 days after the
218 municipal electric utility's receipt of a complete application
219 or 30 days after for a larger order.

220 (d) The municipal electric utility or an existing attacher
221 may object in writing to the applicant's designation that
222 certain aspects of the work required is simple make-ready work.
223 If the municipal electric utility or existing attacher
224 reasonably objects, then the work is deemed complex make-ready
225 work and the FOTMR process is not available to the broadband
226 provider and the application must be processed under the
227 standard make-ready provisions.

228 (e) The new attacher is responsible for coordinating all
229 surveys as part of the FOTMR process and shall use a qualified
230 contractor as set forth in this section. The new attacher shall
231 make commercially reasonable efforts to provide at least 3
232 business days advance notice to the municipal electric utility
233 and existing attachers to allow them to be present for any
234 surveys performed in advance of the FOTMR application.

235 (f) If the new attacher's application is approved and if it
236 has provided 15 days prior written notice of the date, time and
237 nature of the make-ready work to the affected municipal electric
238 utility and existing attaching entities, the new attacher may
239 proceed with the make-ready work using a qualified contractor.

240 (g) The new attacher shall notify any affected municipal
241 electric utility or existing attaching entity immediately if the
242 make-ready work performed damages any equipment or facilities of



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243 the municipal electric utility or of an existing attaching
244 entity. Upon receiving notice from the applicant, the municipal
245 electric utility or existing attaching entity may each make the
246 decision to:

247 1. Complete any necessary remedial work and bill the
248 applicant for the actual costs incurred related to fixing the
249 damage or outage; or

250 2. Require the applicant to fix the damage or outage at its
251 expense immediately following the notice from the municipal
252 electric utility or any existing attacher.

253 (h) The new attacher shall notify the municipal electric
254 utility and existing attachers within 15 days after the make-
255 ready work is completed on a particular pole, and the municipal
256 electric utility and existing attachers shall have 90 days after
257 receipt of the notice to inspect the make-ready work at the new
258 attacher's cost. The municipal electric utility and existing
259 attaching entities may complete any necessary remedial work and
260 bill the applicant for the actual cost incurred or require the
261 applicant the fix the damage or code violations at its expense
262 within 14 days after notice from the pole owner or existing
263 attaching entity.

264 (7) (a) A municipal electric utility may make periodic
265 inspections of a broadband provider's attachments, using its own
266 employees or contractors, and such broadband provider shall
267 reimburse the municipal electric utility for the actual and
268 reasonable expense of such inspections, but only for the costs
269 of inspecting the poles on which the broadband provider is found
270 to be in violation of the National Electrical Safety Code or
271 publicly available, reasonable, and nondiscriminatory municipal



272 electric utility safety and engineering standards for the
273 protection of public health, safety, or welfare permitted by
274 this section.

275 (b) No more frequently than once every 5 years, a municipal
276 electric utility may conduct an audit of a broadband provider's
277 attachments, with the reasonable cost of the audit of the
278 broadband provider's attachments to be borne by the broadband
279 provider. If the results of the pole audit show attachments to
280 poles by the broadband service provider not previously
281 authorized by the municipal electric utility, such poles must be
282 added to the next annual rent invoice and the municipal electric
283 utility may require the broadband service provider to pay up to
284 5 years' back rent for attachments to all such poles not
285 previously authorized as required by the agreement in effect at
286 the time of the attachment.

287 (c) The municipal electric utility shall give a broadband
288 provider reasonable advance written notice of such audits or
289 inspections, except in those instances where safety
290 considerations justify the need for such inspection without the
291 delay of waiting until written notice has been received.

292 (8) If a municipal electric utility pole owner and any
293 attacher cannot reach an agreement or have a dispute related to
294 facilities attached to a redundant pole:

295 (a) A broadband service provider must remove its pole
296 attachments from a redundant pole within 120 calendar days after
297 receipt of written or electronic notice consistent with industry
298 standards from the pole owner requesting such removal which
299 notice includes the pole number, physical address, and GIS
300 coordinates of such pole.



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301 (b) If a broadband service provider fails to remove a pole
302 attachment pursuant to paragraph (a), except to the extent
303 excused by an event of force majeure or other good cause, the
304 pole owner or its agent may transfer or relocate the pole
305 attachment to a new pole at the noncompliant attaching entity's
306 expense or, if no new pole exists because the municipal electric
307 utility has relocated its facilities underground, remove the
308 pole attachment and store the attached facility for 60 days.

309 (c) The broadband service provider shall indemnify, defend,
310 and hold harmless the pole owner and its directors, officers,
311 agents, and employees from and against all liability for direct
312 damage and personal injury caused by the removal, transfer,
313 sale, or disposal of the pole attachments from a redundant pole
314 by the pole owner except to the extent of the municipal electric
315 utility's negligence or willful misconduct.

316 (9) Municipal electric utilities may not charge additional
317 rent or require prior approval or applications for a broadband
318 provider that overlashes its existing wires on a pole. Municipal
319 electric utilities may require up to 15 days' advance notice of
320 planned overlashing. A party that engages in overlashing is
321 responsible for its own equipment and shall ensure that it
322 complies with National Electrical Safety Code and publicly
323 available, reasonable, and nondiscriminatory municipal electric
324 utility safety and engineering standards for the protection of
325 public health, safety, or welfare permitted by this section.

326 (10) Municipal electric utilities and broadband providers
327 are responsible for their own costs related to utility poles and
328 attachments, except as specifically provided herein. Any costs
329 billed in connection with pole attachments must be commercially



330 reasonable and nondiscriminatory, and must include sufficient
331 detail to enable the billed party to verify the accuracy and
332 reasonableness of the costs. A municipal electric utility that
333 provides broadband shall impute to itself the costs of providing
334 such services, and charge any affiliate, subsidiary, or
335 associate company engaged in the provision of such services, an
336 equal amount to the pole attachment rate for which such company
337 would be liable under this section.

338 (11) A municipal electric utility or broadband provider may
339 seek any available remedies at law or equity for violations of
340 this section. In all cases involving this section, and to the
341 extent not otherwise provided by this section, the court shall
342 give effect to the provisions and intent of 47 U.S.C. s. 224 and
343 any Federal Communications Commission rules, regulations, or
344 decisions adopted thereunder, as such existed on July 1, 2021,
345 or as authorized by this section.

346
347 ===== T I T L E A M E N D M E N T =====

348 And the title is amended as follows:

349 Delete lines 12 - 30

350 and insert:

351 records available to broadband providers, provide
352 access to its utility poles, and establish just and
353 reasonable terms and conditions for broadband provider
354 attachments; providing a process for a municipal
355 electric utility and a broadband provider to enter
356 into pole attachment agreements; prohibiting municipal
357 electric utilities from prohibiting a broadband
358 provider from using certain techniques and equipment



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359 if used in accordance with certain safety standards;
360 providing an application process and timelines for
361 pole access between a municipal electric utility and a
362 broadband provider; authorizing a broadband provider
363 seeking a new pole attachment to invoke the Florida
364 one-touch, make-ready process; providing requirements
365 for such process; authorizing a municipal electric
366 utility to make periodic inspections of a broadband
367 provider's attachments; requiring the broadband
368 provider to reimburse the municipal electric utility
369 for certain costs relating to such inspections;
370 authorizing a municipal electric utility to conduct
371 audits of such attachments according to a specified
372 timeframe; requiring advanced written notice of such
373 inspections or audits; providing for the removal of
374 pole attachments within a specified timeframe upon
375 unresolved disputes; prohibiting a municipal electric
376 utility from charging additional rent or requiring
377 prior approval or applications for overlashes;
378 requiring any billed costs to be commercially
379 reasonable, nondiscriminatory, and sufficiently
380 detailed; authorizing