

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1592

INTRODUCER: Appropriations Committee; Finance and Tax Committee; and Senator Burgess and others

SUBJECT: Broadband Internet Infrastructure

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Imhof</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Bruno</u>	<u>Babin</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Bruno</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1592 provides broadband providers access for attachments to utility poles of municipal electric utilities at a promotional rate of \$1 per attachment per pole from July 1, 2021 to July 1, 2024 when serving unserved or underserved broadband Internet customers. All such attachments must follow the higher of the safety standards in the National Electrical Safety Code or the standards set by the utility. The promotional rate is available after application and can be lost if unserved or underserved customers are not provided with broadband Internet access within 12 months of the attachments being made. A utility may not increase the fees charged to broadband providers for pole attachments made between July 1, 2021 and July 31, 2022.

The bill requires municipal electric utilities to identify customers who are unserved or underserved with broadband Internet access to the Office of Broadband. They are further required to disclose pole attachments made at the promotional rate.

The bill directs the Office of Broadband to work with rural communities to identify underserved and unserved communities and leverage resources to help those communities access broadband Internet. The Office of Broadband is directed to provide assistance to fiscally restrained counties to identify and apply for federal grants.

The bill establishes guidelines for cost-sharing when a utility pole must be replaced due to an attachment between the utility and the broadband provider.

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenue.

The bill takes effect July 1, 2021.

II. Present Situation:

Pole Attachments

Utility poles can be configured to disburse services to customers including electrical power, telephone, cable television, broadband, and wireless service.¹ Typically, communication services are attached at a level on the pole below the electrical supply lines.²

Utility poles may be installed and owned by different kinds of utilities, such electrical providers or telecommunications providers.^{3,4} Utility pole owners can charge others to attach another service to the owners' pole.⁵ Pole attachments are regulated either federally by the Federal Communications Commission (FCC) or at the state level.⁶ As of March 19, 2020, 23 states have certified to the FCC that they regulate rates, terms, and conditions for pole attachments.⁷ Florida is not among these states and is subject to FCC oversight for investor-owned electric utilities.⁸

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.⁹ Municipally-owned utility rates and revenues are regulated by their city commission.¹⁰ The PSC has limited jurisdiction over municipally-owned electric utilities.¹¹

¹ Florida Public Service Commission, "What's on a Utility Pole?" available at <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPoleDescriptions> (last visited April 19, 2021).

² *Id.*

³ The term "utility" is defined 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," and the term State is defined as "any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof." 47 U.S.C. s. 224 (1996).

⁴ See News-Press, "FPL, AT&T battle over utility bills," available at <https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/> (last visited April 19, 2021).

⁵ *Id.*

⁶ See American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations Issue Brief*, available at <https://www.publicpower.org/system/files/documents/January%202021%20-%20Federal%20Pole%20Attachment%20Regulations.pdf> (last visited April 19, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited April 19, 2021).

¹⁰ *Id.*

¹¹ Florida Public Service Commission, *2020 FPSC Annual Report*, p.13, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited April 19, 2021).

There are 34 municipal electric companies in Florida¹² and 33 of those municipal electric utilities are represented by the Florida Municipal Electric Association.¹³ These companies serve over three million Floridians.¹⁴

Municipally-owned utilities are specifically exempt from FCC oversight under the Pole Attachment Act passed in 1978.¹⁵

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the “Florida Broadband Deployment Act of 2021.”

Section 2 creates s. 364.0137, F.S., to provide the requirements for broadband provider attachments to municipal electric utility poles.

The bill provides legislative findings that there is a need for increased availability of broadband Internet access in Florida, especially in areas that do not have access to acceptable broadband Internet speeds or to Internet broadband at all.

The bill defines the following terms:

- “Broadband provider” means a person or entity who provides fixed broadband service.
- “Broadband service” means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second for downloading and at least 3 megabits per second for uploading.
- “Underserved” means that retail access to the Internet is not available at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.
- “Unserved” means that retail access to the Internet is not available at speeds of at least 10 megabits per seconds for downloading and 1 megabit per second for uploading.
- “Wireline attachment” means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

The bill provides that each municipal utility must provide broadband providers with access to any utility pole it owns for the purpose of providing service to unserved or underserved ends users within the utility’s service area. From July 1, 2021, to July 1, 2024, a municipal electrical utility will provide such attachments at a promotional rate of \$1 per attachment per pole. A broadband provider who wishes to make attachments at the promotional rate must submit an application to the utility and to the Office of Broadband, including maps and descriptions of which underserved or unserved users will be served by the attachments. A utility will report to the Office of Broadband all connections made at the promotional rate along with any information available as to which of its customers do or do not have access to broadband Internet.

¹² Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited April 19, 2021).

¹³ Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited April 19, 2021).

¹⁴ *Id.*

¹⁵ Pub. L. No. 95-234, 224, 92 Stat. 33 (1978).

The bill provides that any broadband provider that uses the promotional rate must make all reasonable efforts to provide broadband service to the identified underserved or unserved customers identified in the application. If the broadband provider is unable to provide service to those customers within 12 months, the broadband provider may be required to pay the prevailing rate for those attachments.

The bill directs that wireline attachments that are subject to the promotional rate must conform to all other terms and conditions of existing attachment agreements between a municipally-owned electric utility and a broadband provider. If no agreement exists, the parties have 90 days to enter such agreement.

The bill provides that the local technology planning teams within the Office of Broadband shall work with rural communities to help determine availability, locate unserved and underserved customers, and take other steps to further encourage expansion on broadband Internet access.

The bill provides that all attachments must comply with the National Electrical Safety Code or other, higher standards for the public health, safety and welfare if set by the municipal electrical utility.

The bill directs that if a municipal electrical utility is required to replace a pole due to a broadband provider's attachment, the utility may require reimbursement for reasonable and nondiscriminatory costs minus any positive salvage value of the pole. The utility may only require pole replacement if necessary to comply with safety and engineering standards, and may not charge a broadband provider to correct existing violations, to bring a pole into compliance with changed standards, or poles at the end of their useful lives. "Useful life" is defined as 30 years for a wood utility pole and 50 years for all other utility poles, including concrete, steel, or iron poles.

The bill provides that a municipal electrical utility may not increase the fees charged to broadband providers for pole attachments made between July 1, 2021 and July 31, 2022.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) Art. VII, s. 18 of Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates

requirements do not apply to laws having an insignificant fiscal impact^{16, 17} which for Fiscal Year 2021-2022, is forecast at approximately \$2.2 million or less.¹⁸

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenues. Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenues.

B. Private Sector Impact:

Broadband service providers may see an adjustment in the pole attachment fees paid to municipal electric utilities for installation of attachments to the utilities' poles. Broadband service providers will be guaranteed access for pole attachment purposes when providing service to underserved or unserved broadband Internet users.

¹⁶ FLA. CONST. art. VII, s. 18(d).

¹⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact at p. 1, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 19, 2021).

¹⁸ Based on the Demographic Estimating Conference's April 1, 2021, estimated population, adopted on March 13, 2021. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 19, 2021).

C. Government Sector Impact:

Municipal utilities may see an adjustment in the amount of pole attachment fees received from broadband service providers for installation of attachments to the utilities' poles. Municipal utilities will not be able to refuse pole attachments by broadband service providers providing service to underserved or unserved broadband Internet users.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 212.08 of the Florida Statutes.

The bill creates section 364.0137 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriation on April 19, 2021:

The committee substitute:

- Contains a legislative finding that there is a need for increased broadband internet access throughout Florida.
- Defines the terms “broadband provider”, “broadband service”, “underserved”, “unserved”, and “wireline attachment”.
- Creates a promotional period from July 1, 2021 to July 1, 2024 during which a municipal utility must charge \$1 per attachment per pole per year upon application by a broadband provider to the municipal utility and the Office of Broadband.
 - If the broadband provider is unable to provide broadband service to identified unserved or underserved customers within 12 months the broadband provider may be required to pay the prevailing rate on the attachments identified to provide those customers with broadband.
 - The attachments subject to the promotional rate must follow all other terms and conditions of the agreement between the utility and the broadband provider and if no agreement exists, the parties have 90 days to create one.
- Requires the Office of Broadband to work with rural communities to locate unserved and underserved communities and take steps to establish broadband connections in those communities.

- Requires all attachments to comply with standards in the National Electrical Safety Code or nondiscriminatory standards set by the municipal utility which are in excess of the National Electrical Safety code.
- Sets shared responsibility for cost sharing when a pole must be replaced to accept an attachment.
- Freezes rates charged by municipal electrical utilities to broadband providers from July 1, 2021 to July 31, 2021.
- Provides an effective date of July 1, 2021.

CS by Finance and Tax on March 31, 2021:

The committee substitute:

- Narrows the sales tax exemption by including only purchases and leases of qualifying equipment (excluding sales) and by excluding items such as real estate, office equipment, certain facilities, and vehicles.
- Adds definitions for "central office," "headend," "qualifying equipment," and "hub," which definitions are used to limit the exemption to certain equipment located at certain locations.
- Narrows the types of services that qualify as "Internet Access Service" by limiting Internet Access Service to certain upload and download speeds.
- Allows broadband providers and municipal electric utilities to enter agreements and set costs consistent with 47 U.S.C. s. 224 and rules created pursuant to it or as otherwise agreed.
- Outlines the attachment specifications a utility may require broadband providers to follow.
- Creates two processes for broadband providers to follow to attach their equipment to utilities' poles including a stream-lined process known as "Florida one-touch, make-ready" or "FOTMR."
- Clarifies the definition of "attachment" and defines the terms "communication space," "make-ready work," "simple make-ready work," "complex make-ready work," "redundant pole", and "larger order." These definitions are used in the attachment process.
- Outlines certain rights and responsibilities for utilities and broadband providers in regards to indemnification, inspections, audits, repairs, rent, and overlashing.
- Provides emergency rule making authority to the Department of Revenue.

B. Amendments:

None.