

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/SB 1592

INTRODUCER: Finance and Tax Committee and Senator Burgess and others

SUBJECT: Broadband Internet Infrastructure

DATE: April 16, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1592 exempts from the sales and use tax the purchase or lease of certain equipment used by providers of communication services or Internet access services, as defined in the bill.

The bill provides broadband providers access for attachments to utility poles of municipal electric utilities. It provides for the adoption of rates, terms, and conditions for the access to the poles consistent with federal requirements for pole attachments or as the parties agree.

The bill provides municipal electrical utilities and broadband providers with two processes by which they can enter into utility pole attachment agreements including the streamlined Florida one-touch, make-ready process created by the bill. The bill prevents municipal electric utilities from requiring a broadband provider to comply with pole attachment specifications except as provided in the bill. The bill provides guidelines for audits and inspections by utilities. The bill provides criteria for determining which party is responsible for costs. The bill further provides for procedures for court review.

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$75 million beginning in Fiscal Year 2021-2022, and by at least \$81.8 million each year thereafter. The bill will reduce local government receipts by \$22.5 million in Fiscal Year 2021-2022, and by at least \$24.6 million each year thereafter.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ rental of commercial real estate,⁴ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵ Sales tax receipts accounted for approximately 79 percent of the state's general revenue in Fiscal Year 2019-2020.⁶

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁷ A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁸ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered.⁹

Electric Utilities

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.¹⁰ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission (PSC).¹¹

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.¹² Municipally-owned utility rates and revenues are regulated by their city

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), F.S.

⁴ Section 212.031, F.S.

⁵ Section 212.07(2), F.S.

⁶ The Office of Economic and Demographic Research, *Florida Tax Handbook*, p. 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited April 14, 2021) (hereinafter cited as "The Handbook").

⁷ Section 212.055, F.S.

⁸ Section 212.054(2)(a), F.S.

⁹ The Handbook at p. 225.

¹⁰ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited April 14, 2021).

¹¹ *Id.*

¹² *Id.*

commission.¹³ The PSC has limited jurisdiction over municipally-owned electric utilities.¹⁴ There are 34 municipal electric companies in Florida¹⁵ and 33 of those municipal electric utilities are represented by the Florida Municipal Electric Association.¹⁶ These companies serve over three million Floridians.¹⁷

Broadband Internet

In 1978, Congress passed the Pole Attachment Act, adding section 224 to the Communications Act of 1934. The law requires the Federal Communications Commission (FCC) to establish rates for pole attachments.¹⁸ Public power and rural electric cooperative utilities were exempted from this requirement.^{19, 20}

On April 7, 2011, the FCC adopted an order revising its pole attachment rules.²¹ Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC's jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.²²

As of March 19, 2020, 23 states have certified to the FCC that they regulate rates, terms, and conditions for pole attachments, and that they have the authority to consider, and do consider, the interests of subscribers of cable television services, as well as the interests of the consumers of the utility services.²³

III. Effect of Proposed Changes:

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

Section 2 amends s. 212.08, F.S., to exempt from the sales and use tax the purchase or lease of equipment used by providers of communication services or Internet access services. The bill

¹³ *Id.*

¹⁴ 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 14, 2021).

¹⁵ Florida Department of Agriculture and Consumer Services, *supra* at n. 10.

¹⁶ Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited April 14, 2021).

¹⁷ *Id.*

¹⁸ Pub. L. No. 95-234, 224, 92 Stat. 33 (1978).

¹⁹ *Id.*

²⁰ 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).

²¹ FCC Report and Order, FCC 11-50, April 7, 2011, available at <https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment> (last visited April 14, 2021).

²² 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 14, 2021).

²³ Federal Communications Commission, *Public Notice – States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 20-302 (March 19, 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-302A1.pdf> (last visited April 14, 2021).

makes clear that this exemption does not extend to the business rent tax levied by s. 212.031, F.S. The sales and use tax exemption does not include any of the following:

- Real property;
- Improvements to real property;
- Office furniture and fixtures;
- General office equipment and machinery that is not used to provide communications services or Internet access services;
- Vehicles;
- Customer premise equipment; or
- Facilities used to distribute signals beyond the central office, headend, or hub facilities, including fiber optic, coaxial, or other transmission cables; amplifiers; taps; and customer drops.

The bill defines the following terms:

- “Central office” means the location where telephone subscribers’ lines are joined to switching equipment to connect subscribers to each other, locally and long distance. Central office equipment includes, but is not limited to, switches, cable distribution frames, and batteries.
- “Communication services” has the same meaning as in s. 202.11(1), F.S.
- “Headend” means the primary location in a communications provider’s network which receives television programming signals through satellite antennae or fiber optic cables for distribution to the customer premises through a distribution network. Headend equipment includes, but is not limited to, computer-based electronic equipment that receives programming signals and uses prescribed processes to combine, amplify, and convert the programming signals and transmit them through the distribution network. The headend processes and combines signals for distribution to hubs or directly to customer premises. In most cases, the headend also serves as a distribution hub for the fiber optic transfer nodes closest to the headend. The term also includes a super headend, which processes all incoming programming signals and transmits them to regional headends or directly to hubs.
- “Hub” means the secondary location in a communications provider’s network which is connected to the headend by a fiber optic or other cable. A hub may contain electronic equipment that processes, converts, and transmits signals through the distribution network, and can serve a large number of business and residential communities.
- “Internet access service” has the same meaning as in s. 202.11(6), F.S., and only applies to services that provide access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.
- “Provider of communications services or Internet access services” includes a dealer as defined in s. 202.11(2), F.S., a provider of Internet access service, and any member of an affiliated group as defined in s. 202.37(1)(c)2., F.S.
- “Qualifying equipment” means equipment, machinery, software, or other infrastructure used to provide communications services or Internet access services and located within a central office, headend, or hub operated by a provider of communications services or Internet access services.

Section 3 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 just, reasonable, and nondiscriminatory rates, terms, and conditions for access and use of municipal electric utility poles by broadband service providers is essential for the deployment of broad service to the residents of the state. The bill further provides that the terms and conditions associated with the use and access of utility poles must be consistent with 47 U.S.C. s. 224, FCC regulations promulgated under that law as of the effective date of the bill, or as otherwise agreed by the parties.

The bill defines the following terms:

- “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 electric utility.
- “Broadband provider” means a person who provides fixed, terrestrial broadband service. The term includes a person who provides or offers additional services to the public in addition to 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 in the downstream direction and at least 3 megabits per second in the upstream direction.
- “Communications space” means the lower usable space on a utility pole which is typically reserved for low-voltage communications equipment.
- “Complex make-ready work” means transfers and work within the communications space which would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. The term includes any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless service providers, and any work involving the space above the safety space as defined in the National Electrical Safety Code.
- “Larger order” means a pole attachment application requesting access to a number of poles greater than the lesser of 300 poles or 0.5 percent of a municipal electric utility’s poles, and up to the lesser of 3,000 poles or 5 percent of the municipal electric utility’s poles. For purposes of determining whether a request is a larger order, a municipal electric utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.
- “Make-ready work” means engineering or construction activities necessary to make a pole or similar structure available for a new pole attachment or pole attachment modification, including, but not limited to, rearrangement, removal, and replacement of the pole, transfers, and other work incident thereto.
- “Redundant pole” means a utility pole designated for removal from which the municipal electric utility has removed its facilities and provided written notice to the broadband service provider that the provider needs to remove its facilities.
- “Simple make-ready work” means work in the communications space to accommodate a new pole attachment on a pole which can be conducted without any reasonable expectation of a:
 - Service outage or facility damage;
 - Need to splice an existing communications attachment; or
 - Need to relocate an existing wireless attachment.

- “Utility pole” means a pole owned or controlled by a municipal electric utility which is used in whole or in part for electric distribution.

The bill provides that to promote the deployment of broadband service to all residents, each municipal utility must provide broadband providers with access to any utility pole it owns or operates and adopt rates, terms and conditions for such access that are consistent with 47 U.S.C. s. 224 and any FCC regulations and decisions adopted as of July 1, 2021, or as agreed by the parties. The rates, terms, and conditions must be nondiscriminatory, just, and reasonable and may not favor a pole owner, other attaching entities, or affiliates of the pole owner. The utility must maintain the records necessary to calculate the charges, including costs, description, and depreciation of the utility poles, including any ancillary poles.

The bill requires a utility to rearrange or otherwise reengineer any utility pole if necessary to accommodate the broadband provider’s new attachment. If the utility pole must be replaced to accommodate the attachment, the utility may only charge the broadband provider its actual and reasonable costs attributable solely to the new attachment, and not for utility betterment or existing noncompliance.

The bill provides that the utility may require a broadband provider to enter an agreement. A utility may only require broadband providers to comply with specifications that are publicly available, reasonable, and nondiscriminatory safety and engineering standards applicable to utility poles. The specifications adopted may not exceed the specifications in the National Electrical Safety Code, applicable fire safety codes, or any building code or publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards adopted before the broadband provider filed a utility pole attachment application. The specifications must be for the protection of public health, safety, or welfare.

The bill provides two different application processes for utility pole access. The first process can be used if the broadband provider does not request to use the one-touch, make-ready procedures or if the one-touch, make-ready procedures are unavailable due to the kind of work involved. The bill lays out the steps for the first process which provides for parties’ responsibilities, timelines and milestones; exceptions to the parties’ responsibilities, timelines and milestones; and remedies for failures to adhere to the parties’ responsibilities, timelines and milestones.

The bill also creates the Florida one-touch, make-ready (FOTMR) process which is a streamlined process for simple make-ready work applications, which the broadband provider may invoke. The bill lays out the steps for the FOTMR process which provides for parties’ responsibilities, timelines and milestones; exceptions to the parties’ responsibilities, timelines and milestones; and remedies for failures to adhere to the parties’ responsibilities, timelines and milestones.

The bill provides that the utility may make inspections of a broadband provider’s attachments at their own cost. The utility must provide reasonable advance written notice of the inspection. The broadband provider is responsible for reimbursing the utility’s cost if the broadband provider’s attachment is found to be in violation of the specifications for utility pole attachment.

The bill provides that the utility may audit the broadband provider’s attachments once every five years, with the reasonable costs borne by the broadband provider. The utility must provide

reasonable advance written notice of the audit. If the audit reveals attachments by the broadband provider that have not been previously disclosed, the utility may charge back rent for up to five years.

The bill outlines the resolution process in the case of facilities attached to redundant utility poles where an agreement cannot be achieved. It outlines duties and responsibilities for each party, timelines for these duties to be completed, and which party will bear the costs. It also provides that the broadband service will “indemnify, defend, and hold harmless the utility pole owner...against all liability” caused by changes to utility pole attachments from redundant utility poles.

The bill states that utilities may not charge additional rent for broadband providers that overlash²⁴ their existing attachments. The bill requires a broadband provider to provide the utility with at least 15 days prior notice before overlashing an attachment and requires the broadband provider to follow safety and engineering standards.

The bill provides that utilities and broadband providers are responsible for their own costs, except as specifically provided. Any costs billed with regards to an attachment must be non-discriminatory in nature.

A utility or provider may seek available remedies at law or equity for violations of the provisions of the bill. The court is required to give effect to the provisions of 47 U.S.C. s. 224 and FCC regulations and decisions in existence on July 1, 2021, or as otherwise authorized in this section, in making its decision.

Section 4 provides emergency rule making authority to the Department of Revenue to implement the bill.

Section 5 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

²⁴ Overlashing is the process of physically tying additional cables to the cables that are already attached to a utility pole. See Fierce Telecom, *CenturyLink to FCC: Allow fiber overlashing on poles to accelerate broadband deployment*, by Sean Buckley, April 12, 2018, available at: <https://www.fiercetelecom.com/telecom/centurylink-says-fiber-overlashing-fiber-poles-can-accelerate-broadband-deployment> (last visited April 14, 2021).

requirements do not apply to laws having an insignificant fiscal impact^{25, 26} which for Fiscal Year 2021-2022, is forecast at approximately \$2.2 million or less.²⁷

The Revenue Estimating Conference determined that the bill will reduce local revenues by \$22.5 million beginning in Fiscal Year 2021-2022. 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 determined that the bill will reduce General Revenue Fund receipts by \$75 million beginning in Fiscal Year 2021-2022, and by at least \$81.8 million each year thereafter. The bill will reduce local government receipts by \$22.5 million in Fiscal Year 2021-2022, and by at least \$24.6 million each year thereafter.

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.

²⁵ FLA. CONST. art. VII, s. 18(d).

²⁶ 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 14, 2021).

²⁷ 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 14, 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.

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 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
