

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 1592

INTRODUCER: Senator Burgess and others

SUBJECT: Broadband Internet Infrastructure

DATE: March 30, 2021

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 1592 exempts from the sales and use tax the purchase, lease, or sale of 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.

The bill provides for determination of costs for attachments and replacement of utility poles. It prohibits municipal electric utilities from preventing broadband providers from using certain techniques and equipment in the installation of attachments when done in accordance with established safety standards. The bill prevents municipal electric utilities from requiring a broadband provider to comply with pole attachment specifications that exceed existing codes standards. The bill further provides for procedures for attachment agreements and court review.

The Revenue Estimating Conference has not determined the fiscal impact of the bill. Staff estimates that the bill will significantly reduce General Revenue Fund receipts and local government receipts beginning in Fiscal Year 2021-2022.

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,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> rental of commercial real estate,<sup>4</sup> 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.<sup>5</sup> Sales tax receipts accounted for approximately 79 percent of the state's general revenue in Fiscal Year 2019-2020.<sup>6</sup>

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.<sup>7</sup> 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."<sup>8</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered.<sup>9</sup>

### 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.<sup>10</sup> Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission (PSC).<sup>11</sup>

#### *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.<sup>12</sup> Municipally-owned utility rates and revenues are regulated by their city

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<sup>1</sup> Section 212.05(1)(a)1.a., F.S.

<sup>2</sup> Section 212.04(1)(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> Section 212.031, F.S.

<sup>5</sup> Section 212.07(2), F.S.

<sup>6</sup> 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 Mar. 28, 2021) (hereinafter cited as "The Handbook").

<sup>7</sup> Section 212.055, F.S.

<sup>8</sup> Section 212.054(2)(a), F.S.

<sup>9</sup> The Handbook at p. 225.

<sup>10</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 28, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

commission.<sup>13</sup> The PSC has limited jurisdiction over municipally-owned electric utilities.<sup>14</sup> There are 34 municipal electric companies in Florida<sup>15</sup> and 33 of those municipal electric utilities are represented by the Florida Municipal Electric Association.<sup>16</sup> These companies serve over three million Floridians.<sup>17</sup>

### **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.<sup>18</sup> Public power and rural electric cooperative utilities were exempted from this requirement.<sup>19, 20</sup>

On April 7, 2011, the FCC adopted an order revising its pole attachment rules.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

### **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, lease, or sale of equipment used by providers of communication services or Internet access services.

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<sup>13</sup> *Id.*

<sup>14</sup> 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 Mar. 28, 2021).

<sup>15</sup> Florida Department of Agriculture and Consumer Services, *supra* at n. 10.

<sup>16</sup> Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 28, 2021).

<sup>17</sup> *Id.*

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

<sup>19</sup> *Id.*

<sup>20</sup> 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).

<sup>21</sup> 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 Mar. 28, 2021).

<sup>22</sup> 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 Mar. 28, 2021).

<sup>23</sup> Federal Communications Commission, *Public Notice – States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 20-302 (Mar. 19, 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-302A1.pdf> (last visited Mar. 28, 2021).

The bill defines the following terms:

- “Equipment used in the business or providing communications services or Internet access services” is defined as all equipment, machinery, software, or other infrastructure that is:
  - Classified as central office equipment, station equipment, or apparatus, station, connection, wiring, or large private branch exchanges, according to the uniform system of accounts adopted by the Public Service Commission; or
  - Part of a national, regional, or local headend or similar facility operated by a provider of communication services or Internet access services.<sup>24</sup>
- “Communication services” has the same meaning as in s. 202.11(1), F.S.
- “Internet access service” has the same meaning is s. 202.11(6), F.S.
- “Provider of communication services or Internet services” means a dealer as defined in s. 202.11(2), F.S. and any member of an affiliated group as defined in s. 202.37(1)(c)2., F.S., with such dealer.

**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 defines the following terms:

- “Attachment” is defined as any attachment to a utility pole or structure, duct, conduit, or right-of-way owned or controlled by a municipal electric utility;
- “Broadband provider” is defined as a person who provides broadband service and includes a person who provides or offers additional services to the public in addition to broadband service;
- “Broadband service” is defined as 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; and
- “Utility pole” is defined as 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. The rates, terms, and conditions must be nondiscriminatory, just, and reasonable and may not favor a pole owner, owner, or affiliate 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.

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<sup>24</sup> A headend is a facility that accepts TV signals as input from satellites, processes them into cable quality signals, and then distributes them to homes and cable networks. It can also be considered as a master distribution center where incoming television signals are received, selected, amplified and re-modulated, and sent for transmission to cable networks. Rev. Proc. 2015-12, 2015-2 IRB 265, p. 266 (2015).

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 of "advancing the retirement of the existing utility pole." The costs must be measured by all of the following:

- Net book value of the existing utility pole;
- Incremental cost of installing a utility pole with greater capacity than the existing pole; and
- Other incremental costs that may not include the cost of a pole that the utility would have installed at the same location.

A utility may not prohibit a broadband provider from using:

- Boxing techniques;
- Extension arms;
- Attachments below existing attachments where spaces unavailable above the existing attachments;
- Temporary attachments; or
- Other methods or equipment, provided that they comply with the National Electric Safety Code, or any other applicable safety codes.

For any pole replacement, the bill requires the utility to complete all work necessary to accommodate the broadband provider's attachments within 90 days after receipt of an attachment request from the provider. The utility may not require the provider to comply with any attachment specifications that exceed the National Electric Safety Code or any applicable codes.

A municipal electric utility or a broadband provider may submit a written request to negotiate an agreement or to amend, modify, or renew an existing agreement on attachments to conform to the provisions of the bill. The parties must negotiate in good faith for at least 60 days, and after that time, either party may petition the circuit court to determine rates, terms and conditions of the agreements consistent with the provisions of the bill. The court must enter a decision within 180 days after the filing of the petition. The court's decision is retroactive to the date of the written request to negotiate and applies to existing installed before the written request.

Between the date of the written request and the court's decision:

- The terms of any existing agreement on attachments apply, subject to true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.
- In absence of an existing agreement, unless the parties agree otherwise, the court is required to establish interim rates and conditions, subject to a true-up, to put the parties in the position they would have been if the court's decision had been in effect on the date of the negotiation request.

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, in making its decision.

**Section 4** 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<sup>25, 26</sup> which for Fiscal Year 2021-2022, is forecast at approximately \$2.2 million or less.<sup>27</sup>

The Revenue Estimating Conference has not determined the fiscal impact of the bill. Staff estimates that the bill will reduce local revenues 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.

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<sup>25</sup> FLA. CONST. art. VII, s. 18(d).

<sup>26</sup> 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, (Sep. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 28, 2021).

<sup>27</sup> Based on the Demographic Estimating Conference's April 1, 2021, estimated population, adopted on Nov. 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 28, 2021).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates that the bill will reduce General Revenue Fund receipts and local revenues by a significant amount beginning in Fiscal Year 2021-2022.

**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.

**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.

**VI. Technical Deficiencies:**

On line 257, the reference to "commission's determination" should read "court's determination."

**VII. Related Issues:**

The DOR indicated that the effective date of July 1, 2021, does not allow sufficient time for adoption of permanent rules. The department requests emergency rulemaking to implement the provisions of the bill.<sup>28</sup>

The DOR has raised the following implementation issues:

It is unclear if the exemption is intended to be limited to purchases by providers of communications services or Internet access service or if the intent is to also exempt sales by providers. It is unclear if the intent is to exempt the tax imposed on the lease of real property under [s.] 212.031, F.S. Section 212.08, F.S., generally provides exemptions for tangible personal property. While it is assumed the intent is to exempt tangible items, the bill provides that the term equipment includes "other infrastructure" which implies land or buildings. It is unclear what constitutes "Equipment used in the business of providing communications services or Internet access services" on lines 105-115. Reference to a specific publication or definitions would be preferable.<sup>29</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> Department of Revenue, *2021 Agency Legislative Bill Analysis for SB 1592* at page 4 (Mar. 3, 2021), which can be found at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31877> (last visited Mar. 29, 2021).

**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.)

None.

**B. Amendments:**

None.

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

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