

**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 Regulated Industries

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BILL: SB 1592

INTRODUCER: Senators Burgess and Diaz

SUBJECT: Broadband Internet Infrastructure

DATE: March 8, 2021

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

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

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**I. Summary:**

SB 1592 provides that the act may be cited as the “Florida Broadband Deployment Act of 2021.”

The bill 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 also provides that the Department of Revenue (DOR) may develop rules to administer the exemption.

The bill provides a procedure for access by broadband providers 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.

It 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 which are 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.

It provides for procedures for attachment agreements and court review.

The bill has an effective date of July 1, 2021.

## II. Present Situation:

### Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>1</sup> transient rentals,<sup>2</sup> rental of commercial real estate,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains statutory 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. There are currently more than 260 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>4</sup> 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>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202, F.S."<sup>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 2 percent.<sup>7</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>8</sup> Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.<sup>9</sup> Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.<sup>10</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

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<sup>1</sup> Section 212.04, F.S.

<sup>2</sup> Section 212.03, F.S.

<sup>3</sup> Section 212.031, F.S.

<sup>4</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, pp. 166-171 (2020), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 7, 2021).

<sup>5</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited Mar. 7, 2021).

<sup>6</sup> Section 212.054, F.S.

<sup>7</sup> See Office of Economic and Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2021*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Mar. 7, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 7, 2021).

<sup>10</sup> Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 7, 2021).

of the municipality.<sup>11</sup> Municipally owned utility rates and revenues are regulated by their city commission.<sup>12</sup> As noted above, the PSC does have limited jurisdiction over municipally owned electric utilities.<sup>13</sup> In total there are 34 municipal electric companies in Florida.<sup>14</sup> Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.<sup>15</sup>

### **Broadband Internet**

In 1978, Congress passed the Pole Attachment Act, which added Section 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish rates for pole attachments.<sup>16</sup> Under the law, public power and rural electric cooperative utilities were exempted from this requirement.<sup>17</sup> The term “utility” is defined as:

[A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.<sup>18</sup>

On April 7, 2011, the FCC approved its pole attachment order.<sup>19</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>20</sup>

As of the order’s date, 21 states had certified to the FCC that regulate rates, terms, and conditions for pole attachments, and 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>21</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, as

<sup>11</sup> FDACS, *Electric Utilities*, *supra* at n. 9.

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

<sup>13</sup> FPSC, *2020 Annual Report*, *supra* at n. 10.

<sup>14</sup> FDACS, *Electric Utilities*, *supra* at n. 9.

<sup>15</sup> Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 7, 2021).

<sup>16</sup> P.L. 95-234, codified at 47 U.S.C. s. 224.

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

<sup>18</sup> 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.”

<sup>19</sup> FCC Report and Order, FCC 11-50, April 7, 2011, *available at* [FCC Reforms Pole Attachment Rules to Boost Broadband Deployment | Federal Communications Commission](#) (last visited March 7, 2021).

<sup>20</sup> *See* [Preserving the Municipal Exemption from Federal Pole Attachment Regulations | American Public Power Association](#) (last visited March 7, 2021).

<sup>21</sup> *Supra* at n. 19, Appendix C.

defined in the bill. The bill provides that the purchase, lease, or sale of equipment used in the business of providing communication services or Internet access services, in whole or in part, by a provider of the services is exempt from sales tax imposed by ch. 212, F.S.

Equipment 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. It also includes a part of a national, regional, or local headend or similar facility operated by a provider of communication services or Internet access services. 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.<sup>22</sup>

“Communication services” has the same meaning as in s. 202.11(1), F.S. and “Internet access service” has the same meaning as in 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 section 202.37(1)(c)2., F.S.

**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 condition 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 terms “attachment,” “broadband provider,” “broadband service,” and “utility pole.”

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.

A municipal electric utility may not discriminate between providers and any attaching entity. The annual recurring rate established by the utility must be calculated pursuant to the cable service rate formula established by 47 U.S.C. s. 224(d) and FCC regulations and decisions in existence on July 1, 2021. 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 terms and conditions attachment to the poles by a broadband provider must be just and reasonable, nondiscriminatory, and consistent with 47 U.S.C. s. 224 and FCC regulations and

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<sup>22</sup> See Techopedia, *Headend: What does Headend mean?* <https://www.techopedia.com/definition/7550/headend> (last visited March 7, 2021).

decisions in existence on July 1, 2021. 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 apply to existing attachments and to the date of the written request to negotiate and to the continuing terms of all existing attachments 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:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the amount of the tax exemption provided in this bill, but the impact appears to be considerable.

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>23</sup>

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<sup>23</sup> Department of Revenue, *2021 Agency Legislative Bill Analysis for SB 1592* at page 4 (Mar. 3, 2021) (on file with the Senate Committee on Regulated Industries).

**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>24</sup>

**VIII. Statutes Affected:**

This bill substantially amends s. 212.08, F.S.

This bill creates s. 364.0137, F.S.

**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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<sup>24</sup> *Id.*