

By Senator Burgess

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1 A bill to be entitled
2 An act relating to broadband Internet infrastructure;
3 providing a short title; amending s. 212.08, F.S.;
4 exempting the purchase, lease, or sale of certain
5 equipment used by a provider of communications
6 services or a provider of Internet access services in
7 this state from the sales and use tax; defining terms;
8 creating s. 364.0137, F.S.; providing legislative
9 findings; defining terms; requiring municipal electric
10 utilities to ensure that their broadband provider
11 rates and fees meet certain requirements, make certain
12 records available to broadband providers, and
13 establish just and reasonable terms and conditions for
14 broadband provider attachments; prohibiting municipal
15 electric utilities from prohibiting a broadband
16 provider from using certain techniques and equipment
17 if used in accordance with certain safety standards;
18 requiring any required pole replacement by a municipal
19 electric utility to be completed within a specified
20 timeframe; prohibiting municipal electric utilities
21 from requiring a broadband provider to comply with
22 attachment specifications that exceed specified
23 established safety levels; providing construction;
24 authorizing municipal electric utilities or broadband
25 providers to negotiate agreements or renegotiate
26 existing agreements and to petition the court after a
27 specified timeframe if unable to reach an agreement;
28 requiring the court to make a determination within a
29 specified timeframe; specifying that such

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30 determination applies retroactively; authorizing
31 municipal electric utilities and broadband providers
32 to seek any available remedies; providing an effective
33 date.

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35 WHEREAS, although this state is a national leader in
36 private sector broadband investment, including billions of
37 dollars invested by existing service providers, estimates show
38 that as many as 804,000 residents lack access to the services,
39 particularly in rural areas where the cost to deploy facilities
40 is significantly higher than in more densely populated areas,
41 and

42 WHEREAS, the lack of advanced communication capabilities,
43 broadband facilities, and services in certain areas deprives
44 residents of access to opportunities, and

45 WHEREAS, the Legislature finds that it is in the public
46 interest of this state to encourage private-sector investment in
47 broadband deployment and upgrades, encourage greater
48 participation and access for all residents, and remove
49 regulatory and economic barriers to such investment, and

50 WHEREAS, the Legislature finds that it is in the public
51 interest of this state to encourage and facilitate the
52 development of and investment in broadband facilities to advance
53 Florida's economic competitiveness, create job opportunities,
54 enhance health care, and enhance educational advancement, and

55 WHEREAS, the Legislature finds that reasonable rates,
56 terms, and conditions for access and use of municipal utility
57 poles by broadband service providers are essential for the
58 deployment, upgrade, and maintenance of broadband service, and

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59 WHEREAS, it is critical that such access rates, terms, and
60 conditions be reasonable and fully compensatory, as approved by
61 the federal pole attachment regime imposed by the Communications
62 Act of 1934, as amended, 47 U.S.C. s. 224, and the rules and
63 regulations of the Federal Communications Commission governing
64 utilities whose pole attachments are regulated under federal
65 law, NOW, THEREFORE,

66

67 Be It Enacted by the Legislature of the State of Florida:

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69 Section 1. This act may be cited as the "Florida Broadband
70 Deployment Act of 2021."

71 Section 2. Paragraph (ppp) is added to subsection (7) of
72 section 212.08, Florida Statutes, to read:

73 212.08 Sales, rental, use, consumption, distribution, and
74 storage tax; specified exemptions.—The sale at retail, the
75 rental, the use, the consumption, the distribution, and the
76 storage to be used or consumed in this state of the following
77 are hereby specifically exempt from the tax imposed by this
78 chapter.

79 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
80 entity by this chapter do not inure to any transaction that is
81 otherwise taxable under this chapter when payment is made by a
82 representative or employee of the entity by any means,
83 including, but not limited to, cash, check, or credit card, even
84 when that representative or employee is subsequently reimbursed
85 by the entity. In addition, exemptions provided to any entity by
86 this subsection do not inure to any transaction that is
87 otherwise taxable under this chapter unless the entity has

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88 obtained a sales tax exemption certificate from the department
89 or the entity obtains or provides other documentation as
90 required by the department. Eligible purchases or leases made
91 with such a certificate must be in strict compliance with this
92 subsection and departmental rules, and any person who makes an
93 exempt purchase with a certificate that is not in strict
94 compliance with this subsection and the rules is liable for and
95 shall pay the tax. The department may adopt rules to administer
96 this subsection.

97 (ppp) Equipment purchased, leased, or sold in this state
98 for use by a provider of communications services or a provider
99 of Internet access services.-

100 1. The purchase, lease, or sale of equipment used in the
101 business of providing communications services or Internet access
102 services, in whole or in part, by a provider of communications
103 services or Internet access services is exempt from the tax
104 imposed by this chapter.

105 2. As used in this paragraph, the term:

106 a. "Equipment used in the business of providing
107 communications services or Internet access services" means all
108 equipment, machinery, software, or other infrastructure that is:

109 (I) Classified as central office equipment, station
110 equipment or apparatus, station connection, wiring, or large
111 private branch exchanges according to the uniform system of
112 accounts which was adopted and prescribed for the provider by
113 the Public Service Commission; or

114 (II) Part of a national, regional, or local headend or
115 similar facility operated by a provider of communications
116 services or Internet access services.

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117 b. "Communications services" has the same meaning as in s.
118 202.11(1).

119 c. "Internet access service" has the same meaning as
120 defined in s. 202.11(6).

121 d. "Provider of communications services or Internet access
122 services" means a dealer as defined in s. 202.11(2) and any
123 member of an affiliated group as defined in s. 202.37(1)(c)2.
124 with such dealer.

125 Section 3. Section 364.0137, Florida Statutes, is created
126 to read:

127 364.0137 Broadband service infrastructure.-

128 (1) The Legislature finds that just, reasonable, and
129 nondiscriminatory rates, terms, and conditions for the access
130 and use of municipal electric utility poles by broadband service
131 providers is essential to deploy, upgrade, and maintain
132 broadband service to residents of this state. It is critical
133 that municipal electric utility pole access and use rates are
134 just, reasonable, nondiscriminatory, and fully compensatory,
135 which may be achieved under the federal framework applicable to
136 utility poles owned and operated by investor-owned utilities.
137 The terms and conditions associated with the access and use of
138 utility poles must be consistent with 47 U.S.C. s. 224, the
139 Communications Act of 1934, as amended, and the regulations of
140 the Federal Communications Commission as those regulations
141 existed on July 1, 2021.

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

143 (a) "Attachment" means any attachment to a utility pole or
144 structure, duct, conduit, or right-of-way owned or controlled by
145 a municipal electric utility.

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146 (b) "Broadband provider" means a person who provides
147 broadband service and includes a person who provides or offers
148 additional services to the public in addition to broadband
149 service.

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

154 (d) "Utility pole" means a pole owned or controlled by a
155 municipal electric utility which is used in whole or in part for
156 electric distribution.

157 (3) To promote the deployment of broadband service to all
158 residents, each municipal electric utility:

159 (a) Shall provide broadband providers with access to any
160 utility pole it owns or operates and adopt rates, terms, and
161 conditions for such access which are consistent with 47 U.S.C.
162 s. 224 and any Federal Communications Commission regulations and
163 decisions adopted thereunder as such regulations and decisions
164 existed on July 1, 2021. Such rates, terms, and conditions must
165 be nondiscriminatory, just, and reasonable and may not favor a
166 pole owner or an affiliate of the pole owner.

167 (b)1. Shall ensure that any rate or fee that the municipal
168 electric utility charges to a broadband provider for an
169 attachment to a utility pole does not do any of the following:

170 a. Discriminate between or among such providers and any
171 other attaching entity, regardless of the services furnished.

172 b. Exceed the annual recurring rate calculated in
173 accordance with the cable service rate formula established by 47
174 U.S.C. s. 224(d) or any Federal Communications Commission rule,

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175 regulation, or decision adopted thereunder, as such existed on
176 July 1, 2021.

177 2. Shall maintain and make available to a broadband
178 provider all records necessary to calculate the rate it charges
179 to the provider. The records must include all of the following:

180 a. All costs associated with utility poles; any
181 improvements or reinforcements thereto; and any appurtenances,
182 including costs associated with storm hardening efforts, which
183 must be identified with particularity.

184 b. Identification of the actual height, usable space, and
185 appurtenances associated with each utility pole.

186 c. Information regarding any ancillary utility poles and
187 the costs associated with such poles, which are separately
188 identifiable from the principal utility poles they support.

189 d. To the extent the accumulated depreciation for a utility
190 pole which is used to calculate the rate is based on records
191 specific to pole plant rather than based on proration of
192 accumulated depreciation tracked at a higher aggregated plant
193 amount, sufficiently detailed data to support the pole-specific
194 figure.

195 (c) Shall establish just and reasonable terms and
196 conditions for a broadband provider attachment which do not
197 discriminate between or among providers or any other attaching
198 entity and which are consistent with 47 U.S.C. s. 224 and any
199 Federal Communications Commission rule, regulation, or decision
200 adopted thereunder, as such existed on July 1, 2021, except
201 that:

202 1. If necessary to accommodate a broadband provider's new
203 attachment, the municipal electric utility shall rearrange,

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204 expand, replace, or otherwise safely reengineer any utility pole
205 upon the request of the broadband provider. If the municipal
206 electric utility is required to replace a utility pole pursuant
207 to this subparagraph, the municipal electric utility may not
208 require a broadband provider to reimburse any costs associated
209 with such pole replacement beyond the recovery of its actual and
210 reasonable costs of advancing the retirement of the existing
211 utility pole. Such costs shall be measured by all of the
212 following:

213 a. The net book value of the existing utility pole;
214 b. The incremental cost, if any, of installing a utility
215 pole with greater capacity than the utility pole the municipal
216 electric utility would have installed in the normal course of
217 its operations;

218 c. Any other incremental costs proved by the municipal
219 electric utility, provided that such incremental costs do not
220 include any costs associated with a utility pole the municipal
221 electric utility would have installed at the same location;

222 2. The municipal electric utility may not prohibit the
223 broadband provider from using boxing techniques, extension arms,
224 attachments below existing attachments where space is
225 unavailable above existing attachments, temporary attachments,
226 or other methods or equipment, provided that such use complies
227 with the National Electric Safety Code or other applicable
228 safety codes; and

229 3. With respect to a utility pole replacement, the
230 municipal electric utility must complete such pole replacement
231 and any other work necessary to accommodate the broadband
232 provider's attachment to the replaced pole within 90 days after

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233 receiving a complete attachment request from a broadband
234 provider.

235 (d) May not require a broadband provider to comply with any
236 utility pole attachment specifications that exceed the
237 specifications in the National Electric Safety Code, applicable
238 fire safety codes, or any building code or similar code of
239 general applicability for the protection of public health,
240 safety, or welfare which was adopted by the applicable local
241 governmental jurisdiction before the broadband provider filed a
242 utility pole attachment application. However, this section may
243 not be construed to expand the power of any local governmental
244 jurisdiction.

245 (4) A municipal electric utility or broadband provider may
246 submit a written request to negotiate agreements or to amend,
247 modify, or renew any existing agreement addressing attachments
248 by the broadband provider to conform such agreements to this
249 section. The parties must negotiate in good faith for at least
250 60 days after the written request, after which either party may
251 petition the circuit court to determine rates, terms, and
252 conditions for the agreements consistent with this section. The
253 court shall make a determination within 180 days after the
254 filing of the petition for that determination. The court's
255 determination applies retroactively to attachments between the
256 date of the written request to negotiate and the date of the
257 commission's determination, and to the continuing terms of all
258 existing attachments that were installed before the written
259 request. Between the date of the written request to negotiate
260 and the date of the court's determination:

261 (a) The terms and conditions of any existing agreement

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262 addressing such attachments apply, subject to true-up, to put
263 the parties in the positions in which they would have been had
264 the court's determination been in effect on the date of the
265 written request to negotiate; and

266 (b) In the absence of such existing agreement, unless the
267 parties agree otherwise, the court, within 30 days after the
268 petition for a determination, must establish interim rates,
269 terms, and conditions that will apply, subject to true-up, to
270 put the parties in the positions in which they would have been
271 had the court's determination been in effect on the date of the
272 written request to negotiate.

273 (5) A municipal electric utility or broadband provider may
274 seek any available remedies at law or equity for violations of
275 this section. In all cases involving this section, and to the
276 extent not otherwise provided by this section, the court shall
277 give effect to the provisions and intent of 47 U.S.C. s. 224 and
278 any Federal Communications Commission rules, regulations, or
279 decisions adopted thereunder, as such existed on July 1, 2021.

280 Section 4. This act shall take effect July 1, 2021.