A bill to be entitled
An act relating to broadband Internet infrastructure;
providing a short title; amending s. 212.08, F.S.;
exempting the purchase or lease of certain equipment
by a provider of communications services or a provider
of Internet access services in this state from the
sales and use tax; providing exceptions; defining
terms; creating s. 364.0137, F.S.; providing
legislative findings; defining terms; requiring
municipal electric utilities to ensure that their
broadband provider rates and fees meet certain
requirements, make certain records available to
broadband providers, provide access to its utility
poles, and establish just and reasonable terms and
conditions for broadband provider attachments;
providing a process for a municipal electric utility
and a broadband provider to enter into pole attachment
agreements; prohibiting municipal electric utilities
from prohibiting a broadband provider from using
certain techniques and equipment if used in accordance
with certain safety standards; providing an
application process and timelines for pole access
between a municipal electric utility and a broadband
provider; authorizing a broadband provider seeking a
new pole attachment to invoke the Florida one-touch,
make-ready process; providing requirements for such
process; authorizing a municipal electric utility to
make periodic inspections of a broadband provider’s
attachments; requiring the broadband provider to
reimburse the municipal electric utility for certain
costs relating to such inspections; authorizing a
municipal electric utility to conduct audits of such
attachments according to a specified timeframe;
requiring advanced written notice of such inspections
or audits; providing for the removal of pole
attachments within a specified timeframe upon
unresolved disputes; prohibiting a municipal electric
utility from charging additional rent or requiring
prior approval or applications for overlatches;
requiring any billed costs to be commercially
reasonable, nondiscriminatory, and sufficiently
detailed; authorizing municipal electric utilities and
broadband providers to seek any available remedies;
authorizing the Department of Revenue to adopt
emergency rules; providing that such rules are
effective for a specified timeframe and may be
renewed; providing an effective date.

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

WHEREAS, the lack of advanced communication capabilities,
broadband facilities, and services in certain areas deprives
residents of access to opportunities, and
WHEREAS, the Legislature finds that it is in the public interest of this state to encourage private-sector investment in broadband deployment and upgrades, encourage greater participation and access for all residents, and remove regulatory and economic barriers to such investment, and

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

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

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

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

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

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

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

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ppp) Equipment purchased or leased in this state by a provider of communications services or a provider of Internet access services.—

1. The purchase or lease of qualifying equipment by a provider of communications services or Internet access services is exempt from the tax imposed by this chapter.
2. The exemption provided by this paragraph does not apply to the purchase or lease of any of the following:
   a. Real property;
   b. Improvements to real property;
   c. Office furniture and fixtures;
   d. General office equipment and machinery that is not used to provide communications services or Internet access services;
   e. Vehicles;
   f. Customer premise equipment; or
   g. 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.

3. The exemption provided by this paragraph does not apply to the tax levied by s. 212.031.

4. As used in this paragraph, the term:
   a. “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.
   b. “Communications services” has the same meaning as in s. 202.11(1).
   c. “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.

d. “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.

e. “Internet access service” has the same meaning as in s. 202.11(6) 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.

f. “Provider of communications services or Internet access services” includes a dealer as defined in s. 202.11(2), a provider of Internet access service, and any member of an affiliated group as defined in s. 202.37(1)(c)2.

g. “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. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband service infrastructure.—

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

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

(a) “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.

(b) “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.

(c) “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.

(d) “Communications space” means the lower usable space on a utility pole which is typically reserved for low-voltage communications equipment.

(e) “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.

(f) “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.

(g) “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.
(h) “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.

(i) “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:

1. Service outage or facility damage;
2. Need to splice an existing communications attachment; or
3. Need to relocate an existing wireless attachment.

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

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

(a) Charge just, reasonable, and nondiscriminatory rates for access to any utility pole it owns or operates which do not discriminate between or among such providers and any other attaching entity, including any entity affiliated with the municipal electric utility, regardless of the services furnished. Except as provided in subsection (4), such rates may not exceed the rate calculated consistent with 47 U.S.C. 224(d) and any Federal Communications Commission regulations and decisions adopted thereunder as such regulations and decisions existed on July 1, 2021.

(b) Maintain and make available to a broadband provider all records necessary to calculate the rate it charges to the
provider in accordance with paragraph (a).

(c) Provide broadband providers with access to any utility pole it owns or operates and adopt just, reasonable, and nondiscriminatory terms and conditions for such access consistent with the requirements applicable to investor-owned utilities under 47 U.S.C. s. 224 and any Federal Communications Commission regulations and decisions adopted thereunder, as such regulations and decisions existed on July 1, 2021, except as otherwise provided in this section and agreed to by the parties.

Notwithstanding the foregoing:

1. If necessary to accommodate a broadband provider’s new attachment, the municipal electric utility shall rearrange, expand, replace, or otherwise safely reengineer any utility pole upon the request of the broadband provider.

2. If the municipal electric utility is required to replace a utility pole pursuant to subparagraph 1., the municipal electric utility may require a broadband provider to reimburse reasonable costs attributable solely to the new attachment. Broadband providers may not be required to pay for the cost of utility betterment or for costs attributable to preexisting noncompliance.

(4) A municipal electric utility may require a broadband provider to enter into a pole attachment agreement to attach to a utility pole the municipal electric utility owns or operates, and the parties shall negotiate such agreements in good faith.

(a) Broadband providers and municipal electric utilities shall negotiate in good faith to adopt pole attachment agreements consistent with this section or to amend existing agreements to ensure that attachments installed after July 1,
(a) An application is deemed complete if the municipal
electric utility and broadband provider shall conduct the pole access process as provided under this subsection.
(5) If a broadband provider does not request to use one-touch, make-ready procedures pursuant to subsection (6), or if such procedures are unavailable due to the nature of the make-ready work required to accommodate a broadband provider’s attachment, a municipal electric utility and broadband provider shall conduct the pole access process as provided under this subsection.

1. A municipal electric utility may adopt publicly available, reasonable, and nondiscriminatory safety and engineering standards for the protection of public health, safety, or welfare applicable to attachments to the municipal electric utility’s poles.

2. Safety and engineering standards adopted pursuant to this section 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 for the protection of public health, safety, or welfare adopted before the broadband provider filed a utility pole attachment application.

The parties must negotiate in good faith for at least 60 days after receipt of a written request, after which either party may petition the circuit court to determine rates, terms, and conditions for the agreements consistent with this section.
(b) A municipal utility may not require a broadband provider to comply with any utility pole attachment specifications except as provided in this section.
electric utility does not respond within 10 business days or if the response does not specify any reasons why the application is incomplete. Preconstruction surveys and engineering must be completed within 45 days or within 60 days for larger orders.

(b) If a municipal electric utility grants a pole attachment application that requires make-ready work, the municipal electric utility shall identify any make-ready work necessary to accommodate the proposed pole attachment, on a pole-by-pole basis if requested, along with a cost estimate, within 15 days after the date of approval of the pole attachment application. A municipal electric utility may withdraw an outstanding estimate beginning 15 days after the estimate is presented except that such time must be tolled during any good faith negotiation concerning the estimate cost or timing.

(c) Upon receipt of payment of the estimate, a municipal electric utility shall immediately notify in writing all known entities with existing attachments which may be affected by the make-ready work.

(d)1. Except as provided in paragraph (e), make-ready work must be commenced within 20 business days after the date the applicant made payment for the make-ready work estimate, and must be completed in a timely manner, at a reasonable cost, and as reasonably practicable, but not later than:

a. For applications requesting attachment to the lesser of 300 poles or 0.5 percent of the electric utility’s poles in any 30-day period, 30 days or 90 days for attachments above the communications space.

b. For larger orders, 75 days or 105 days for attachments above the safety space.
2. If an application seeks attachment to a number of poles exceeding a larger order, the parties shall negotiate a reasonable timeframe for completion of the make-ready work covered by the application.

(e) A municipal electric utility may deviate from the timelines set forth in paragraph (d) if the parties otherwise agree in their pole attachment agreement, or for good and sufficient cause that renders it infeasible to complete the make-ready work within the time limits set forth in this section, including incidents of natural disasters and emergencies.

(f) If a municipal electric utility or any existing attachers fail to complete a survey necessary to the review of an application or to complete make-ready work within the times specified in this section, a broadband provider may hire a contractor to perform such survey or make-ready work.

(g) A new attacher shall provide the affected municipal electric utility and existing attachers with advance notice of not less than 5 days of the impending make-ready work and within 15 days after completion of make-ready work on a particular pole. The municipal electric utility and affected existing attachers shall inspect the make-ready work within 90 days after receipt of notice.

(h) The new attacher shall notify an affected utility or existing attacher immediately if make-ready work damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or an existing attacher. Upon notice or discovery of damage or noncompliance caused by the new attacher, the utility
or existing attacher may either:

1. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage;

or

2. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(6) A broadband provider seeking a new pole attachment may elect to invoke the Florida one-touch, make-ready (FOTMR) process pursuant to this subsection.

(a) Any FOTMR pole attachment application must identify the make-ready work to be performed and must state that the make-ready work required for every utility pole in the application does not require anything more than simple make-ready work. It is the responsibility of the broadband provider to ensure that the make-ready work requested in an attachment application is simple make-ready work and not complex make-ready work.

(b) A municipal electric utility shall review a new FOTMR pole attachment application for completeness. An application is deemed complete if the municipal electric utility does not respond within 10 business days after receipt of the application or if the response does not specify any reasons why the application is incomplete.

(c) A municipal electric utility shall review a completed application requesting FOTMR and respond to the applicant either granting or denying an application within 15 days after the municipal electric utility’s receipt of a complete application or 30 days after for a larger order.

(d) The municipal electric utility or an existing attacher
may object in writing to the applicant’s designation that certain aspects of the work required is simple make-ready work. If the municipal electric utility or existing attacher reasonably objects, then the work is deemed complex make-ready work and the FOTMR process is not available to the broadband provider and the application must be processed under the standard make-ready provisions.

(e) The new attacher is responsible for coordinating all surveys as part of the FOTMR process and shall use a qualified contractor as set forth in this section. The new attacher shall make commercially reasonable efforts to provide at least 3 business days advance notice to the municipal electric utility and existing attachers to allow them to be present for any surveys performed in advance of the FOTMR application.

(f) If the new attacher’s application is approved and if it has provided 15 days prior written notice of the date, time and nature of the make-ready work to the affected municipal electric utility and existing attaching entities, the new attacher may proceed with the make-ready work using a qualified contractor.

(g) The new attacher shall notify any affected municipal electric utility or existing attaching entity immediately if the make-ready work performed damages any equipment or facilities of the municipal electric utility or of an existing attaching entity. Upon receiving notice from the applicant, the municipal electric utility or existing attaching entity may each make the decision to:

1. Complete any necessary remedial work and bill the applicant for the actual costs incurred related to fixing the damage or outage; or
2. Require the applicant to fix the damage or outage at its expense immediately following the notice from the municipal electric utility or any existing attacher. 

(h) The new attacher shall notify the municipal electric utility and existing attachers within 15 days after the make-ready work is completed on a particular pole, and the municipal electric utility and existing attachers shall have 90 days after receipt of the notice to inspect the make-ready work at the new attacher’s cost. The municipal electric utility and existing attaching entities may complete any necessary remedial work and bill the applicant for the actual cost incurred or require the applicant the fix the damage or code violations at its expense within 14 days after notice from the pole owner or existing attaching entity.

(7) (a) A municipal electric utility may make periodic inspections of a broadband provider’s attachments, using its own employees or contractors, and such broadband provider shall reimburse the municipal electric utility for the actual and reasonable expense of such inspections, but only for the costs of inspecting the poles on which the broadband provider is found to be in violation of the National Electrical Safety Code or publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of public health, safety, or welfare permitted by this section.

(b) No more frequently than once every 5 years, a municipal electric utility may conduct an audit of a broadband provider’s attachments, with the reasonable cost of the audit of the broadband provider’s attachments to be borne by the broadband
provider. If the results of the pole audit show attachments to poles by the broadband service provider not previously authorized by the municipal electric utility, such poles must be added to the next annual rent invoice and the municipal electric utility may require the broadband service provider to pay up to 5 years’ back rent for attachments to all such poles not previously authorized as required by the agreement in effect at the time of the attachment.

(c) The municipal electric utility shall give a broadband provider reasonable advance written notice of such audits or inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

(8) If a municipal electric utility pole owner and any attacher cannot reach an agreement or have a dispute related to facilities attached to a redundant pole:

(a) A broadband service provider must remove its pole attachments from a redundant pole within 120 calendar days after receipt of written or electronic notice consistent with industry standards from the pole owner requesting such removal which notice includes the pole number, physical address, and GIS coordinates of such pole.

(b) If a broadband service provider fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause, the pole owner or its agent may transfer or relocate the pole attachment to a new pole at the noncompliant attaching entity’s expense or, if no new pole exists because the municipal electric utility has relocated its facilities underground, remove the
pole attachment and store the attached facility for 60 days.

(c) The broadband service provider shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability for direct damage and personal injury caused by the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner except to the extent of the municipal electric utility’s negligence or willful misconduct.

(9) Municipal electric utilities may not charge additional rent or require prior approval or applications for a broadband provider that overlashes its existing wires on a pole. Municipal electric utilities may require up to 15 days’ advance notice of planned overlashing. A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with National Electrical Safety Code and publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of public health, safety, or welfare permitted by this section.

(10) Municipal electric utilities and broadband providers are responsible for their own costs related to utility poles and attachments, except as specifically provided herein. Any costs billed in connection with pole attachments must be commercially reasonable and nondiscriminatory, and must include sufficient detail to enable the billed party to verify the accuracy and reasonableness of the costs. A municipal electric utility that provides broadband shall impute to itself the costs of providing such services, and charge any affiliate, subsidiary, or associate company engaged in the provision of such services, an equal amount to the pole attachment rate for which such company
would be liable under this section.

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

Section 4. (1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming a law and expires July 1, 2022.

Section 5. This act shall take effect July 1, 2021.