



529128

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/20/2021	.	
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The Committee on Appropriations (Albritton) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (g) is added to subsection (13) of  
section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(g) Rules adopted by the Florida Public Service Commission  
to implement ss. 366.04(8) and (9) and 366.97 are not subject to



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11 s. 120.541.

12 Section 2. Subsections (4) through (9) are added to section  
13 366.02, Florida Statutes, to read:

14 366.02 Definitions.—As used in this chapter:

15 (4) "Attaching entity" means a person that is a local  
16 exchange carrier, a public utility, a communications services  
17 provider, a broadband service provider, or a cable television  
18 operator that owns or controls pole attachments.

19 (5) "Communications services" has the same meaning as in s.  
20 202.11(1).

21 (6) "Pole" means a pole used for electric distribution  
22 service, streetlights, communications services, local exchange  
23 services, or cable television services which is owned in whole  
24 or in part by a pole owner. The term does not include a pole  
25 used solely to support wireless communications services  
26 facilities.

27 (7) "Pole attachment" means any attachment by a public  
28 utility, local exchange carrier communications services  
29 provider, broadband provider, or cable television operator to a  
30 pole, duct, conduit, or right-of-way owned or controlled by a  
31 pole owner.

32 (8) "Pole owner" means a local exchange carrier, a public  
33 utility, a communications services provider, or a cable  
34 television operator that owns a pole.

35 (9) "Redundant pole" means a pole owned or controlled by a  
36 pole owner which is:

37 (a) Within 50 feet of a new pole that is intended to  
38 replace the old pole from which some or all of the pole  
39 attachments have not been removed and transferred to the new



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40 pole;

41 (b) Left standing after the pole owner has relocated its  
42 facilities to underground but on which pole attachments of other  
43 attaching entities remain; or

44 (c) Left standing after a pole owner's attachments have  
45 been removed from that route or location to accommodate a new  
46 route or design for the delivery of service.

47 Section 3. Subsections (8) and (9) are added to section  
48 366.04, Florida Statutes, to read:

49 366.04 Jurisdiction of commission.—

50 (8) (a) The commission shall regulate and enforce rates,  
51 charges, terms, and conditions for pole attachments in  
52 situations in which a pole owner is unable to reach an agreement  
53 with a party seeking pole attachments, including the types of  
54 attachments regulated under 47 U.S.C. s. 224(a)(4), attachments  
55 to streetlight fixtures, or attachments to poles owned by a  
56 communications services provider, to ensure that such rates,  
57 charges, terms, and conditions are just and reasonable. The  
58 commission's authority under this subsection includes, but is  
59 not limited to, the state regulatory authority referenced in 47  
60 U.S.C. s. 224(c).

61 (b) In developing such rules, the commission shall consider  
62 the interests of the subscribers and users of the services  
63 offered through such pole attachments, as well as the interests  
64 of the consumers of any pole owner providing such attachments.

65 (c) It is the intent of the Legislature to encourage  
66 parties to enter into voluntary pole attachment agreements, and  
67 this subsection may not be construed to prevent parties from  
68 voluntarily entering into pole attachment agreements without



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69 commission approval.

70 (d) A party's right to nondiscriminatory access to a pole  
71 under this subsection is identical to the rights afforded under  
72 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its  
73 poles on a nondiscriminatory basis when there is insufficient  
74 capacity, for reasons of safety and reliability, and when  
75 required by generally applicable engineering purposes. A pole  
76 owner's evaluation of capacity, safety, reliability, and  
77 engineering requirements must consider relevant construction and  
78 reliability standards approved by the commission and may include  
79 an evaluation of the financial and performance-related  
80 capabilities of the entity requesting attachment.

81 (e) The commission shall hear and resolve complaints  
82 concerning rates, charges, terms, conditions, voluntary  
83 agreements, or any denial of access relative to pole attachments  
84 with regard to the types of attachments regulated under 47  
85 U.S.C. s. 224, attachments to streetlight fixtures, or  
86 attachments owned by a communications services provider. Federal  
87 Communications Commission precedent is not binding upon the  
88 commission in the exercise of its authority under this  
89 subsection. The commission shall establish cost-based rates and  
90 charges for pole attachments and shall apply the decisions and  
91 orders of the Federal Communications Commission in determining  
92 pole attachment rates unless a pole owner or attaching entity  
93 establishes by competent substantial evidence pursuant to  
94 proceedings conducted pursuant to ss. 120.569 and 120.57 that an  
95 alternative cost of service-based pole attachment rate is  
96 appropriate and in the public interest.

97 (f) Upon commencement of its authority under this



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98 subsection, the commission, upon the request of a party to a  
99 complaint proceeding pending before the Federal Communications  
100 Commission, shall assume jurisdiction over the matter if it is  
101 not yet subject to a final order of the Federal Communications  
102 Commission at the time of the request.

103 (g) The commission shall adopt rules by January 1, 2022, to  
104 administer and implement this subsection, including one or more  
105 appropriate formulae for apportioning costs, and shall, upon  
106 adoption of such rules, provide its certification to the Federal  
107 Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

108 (9)(a) The commission shall regulate the safety, vegetation  
109 management, repair, replacement, maintenance, relocation,  
110 emergency response, and storm restoration requirements for  
111 poles, conduits, ducts, pipes, pole attachments, wires, cables,  
112 and related plants and equipment of communication services  
113 providers. This paragraph does not apply to a communications  
114 services provider that owns no poles.

115 (b) The commission shall adopt rules by April 1, 2022, to  
116 administer and implement this subsection, including, but not  
117 limited to:

118 1. Mandatory pole inspections, including repair or  
119 replacement; vegetation management requirements for poles owned  
120 by providers of communications services; and the timely removal  
121 of pole attachments; and

122 2. Monetary penalties to be imposed upon any communications  
123 services provider that fails to comply with any such rule of the  
124 commission.

125 (c) The commission may access the books and records of  
126 communications services providers to the limited extent



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127 necessary to perform its functions and to exercise its authority  
128 under subsection (8), this subsection, and s. 366.97(4). Upon  
129 request by a communications services provider, any records that  
130 are shown and found to be proprietary confidential business  
131 information that is confidential or exempt from disclosure under  
132 s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution  
133 which are received by the commission under this paragraph shall  
134 retain their confidential or exempt status when held by the  
135 commission.

136 Section 4. Section 366.97, Florida Statutes, is created to  
137 read:

138 366.97 Redundant poles; transfer of ownership; penalties.-

139 (1) The Legislature finds that:

140 (a) It is in the public interest for public utilities,  
141 communications services providers, and cable television  
142 operators that own poles to harden their infrastructure to  
143 strengthen the ability of their above-ground infrastructure to  
144 withstand extreme weather conditions by, among other things,  
145 replacing older poles with newer, stronger poles; however, this  
146 work combined with the undergrounding of electrical facilities  
147 may result in redundant poles within public rights-of-way and  
148 easements for significant durations because owners of third-  
149 party pole attachments may not keep pace in removing their  
150 facilities from the old poles.

151 (b) Pole owners that set new poles are prevented from  
152 removing redundant poles when the pole attachments of other  
153 entities remain on the old poles.

154 (c) Redundant poles in the public rights-of-way and  
155 easements are aesthetically unappealing and potentially create



156 overcrowding of, and unsafe conditions in, the public rights-of-  
157 way and easements.

158 (d) It is in the public interest to timely remove pole  
159 attachments from redundant poles.

160 (2) The commission by rule shall determine a process by  
161 which pole owners shall provide at least 180 calendar days'  
162 electronic or written advance notice to affected attaching  
163 entities of major hardening projects the purpose of which is to  
164 replace poles to ensure the poles meet extreme wind loading  
165 requirements. The advance hardening project notice must include:

166 (a) The scope of the major hardening project, to the extent  
167 determined, the locations of the affected poles, the expected  
168 start date, and the expected completion date of the major  
169 hardening project; and

170 (b) The date, time, and location of a field meeting for the  
171 pole owner and attaching entities to review and discuss the  
172 planned major hardening project details, including the types of  
173 replacement poles to be used. The field meeting must occur no  
174 sooner than 15 calendar days after the date of the notice and no  
175 later than 45 calendar days after the notice.

176 (3) (a) An attaching entity must remove its pole attachments  
177 from a redundant pole within 180 calendar days after receipt of  
178 an electronic or a written notice from the pole owner requesting  
179 such removal. The commission shall determine by rule the  
180 sufficiency of, and requirements for, such removal notice and  
181 may consider the use of a joint use notification software  
182 program to accomplish such removal notice.

183 (b) If an attaching entity fails to remove a pole  
184 attachment pursuant to paragraph (a), except to the extent



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185 excused by an event of force majeure or other good cause as  
186 determined by the commission, the pole owner or its agent may  
187 transfer or relocate the pole attachment to the new pole at the  
188 noncompliant attaching entity's expense. This subsection does  
189 not apply to an electric utility's pole attachments. The  
190 noncompliant attaching entity shall indemnify, defend, and hold  
191 harmless the pole owner and its directors, officers, agents, and  
192 employees from and against all liability, except to the extent  
193 of any finding of gross negligence or willful misconduct,  
194 including attorney fees and litigation costs, arising in  
195 connection with the transfer of the pole attachment from a  
196 redundant pole to a new pole by the pole owner.

197 (c) If a pole attachment is no longer in use by a  
198 noncompliant attaching entity, the pole owner or its agent may  
199 remove the pole attachment at the noncompliant attaching  
200 entity's expense and may sell or dispose of the pole attachment,  
201 except to the extent the attaching entity's noncompliance is  
202 excused by an event of force majeure or other good cause as  
203 determined by the commission. The noncompliant attaching entity  
204 shall indemnify, defend, and hold harmless the pole owner and  
205 its directors, officers, agents, and employees from and against  
206 all liability, except to the extent of any finding of gross  
207 negligence or willful misconduct, including attorney fees and  
208 litigation costs, arising in connection with the removal,  
209 transfer, sale, or disposal of the pole attachments from a  
210 redundant pole by the pole owner.

211 (d) The commission may require by rule that an attaching  
212 entity post security instruments in favor of pole owners in  
213 amounts reasonably sufficient to cover the cost of the removal,





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214 transfer, sale, or disposal of pole attachments.

215 (4) The commission shall impose monetary penalties upon any  
216 entity subject to its jurisdiction which is found to be in  
217 violation of this section. Upon petition by a pole owner, the  
218 commission may issue orders requiring the removal or transfer of  
219 pole attachments by noncompliant attaching entities and shall  
220 impose monetary penalties in accordance with this section.

221 (5) All monetary penalties assessed by the commission  
222 pursuant to this section must be used by the commission to  
223 provide grants for the installing and upgrading of broadband  
224 infrastructure in unserved and underserved rural and low-income  
225 areas of this state. The commission shall establish criteria for  
226 the award of grants from the fund to businesses and  
227 organizations that have demonstrated the ability to construct  
228 and install infrastructure and that have submitted an  
229 application and proposal detailing how the grant funds would  
230 further the objectives of this subsection to expand broadband  
231 services in unserved and underserved areas. The commission may  
232 disburse monies from the fund to grant recipients selected by  
233 the commission in accordance with its criteria.

234 (6) This section may not be construed to do any of the  
235 following:

236 (a) Prevent a party at any time from entering into a  
237 voluntary agreement authorizing a pole owner to remove an  
238 attaching entity's pole attachment. It is the intent of the  
239 Legislature to encourage parties to enter into such voluntary  
240 agreements without commission approval.

241 (b) Impair the contract rights of a party to a valid pole  
242 attachment agreement in existence before the effective date of



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243 this act.

244 (7) The commission shall adopt rules by April 1, 2022, to  
245 implement this section, including rules providing for the timely  
246 and coordinated removal of all pole attachments from redundant  
247 poles and establishing monetary penalties to be imposed against  
248 any entity in violation of this section.

249 Section 5. The Division of Law Revision is directed to  
250 replace the phrase "the effective date of this act" wherever it  
251 occurs in this act with the date this act becomes a law.

252 Section 6. This act shall take effect upon becoming a law.

254 ===== T I T L E A M E N D M E N T =====

255 And the title is amended as follows:

256 Delete everything before the enacting clause  
257 and insert:

258 A bill to be entitled  
259 An act relating to utility and communications poles;  
260 amending s. 120.80, F.S.; exempting certain rules  
261 adopted by the Public Service Commission from  
262 legislative ratification requirements; amending s.  
263 366.02, F.S.; defining terms; amending s. 366.04,  
264 F.S.; requiring the commission to regulate and enforce  
265 rates, charges, terms, and conditions for pole  
266 attachments under certain circumstances; providing  
267 requirements for such rules; providing construction;  
268 providing situations under which a pole owner may deny  
269 access to the owner's pole on a nondiscriminatory  
270 basis; requiring the commission to hear and resolve  
271 complaints concerning rates, charges, terms,



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272 conditions, voluntary agreements, and denial of access  
273 relative to pole attachments; requiring the commission  
274 to establish cost-based rates and charges for pole  
275 attachments and apply certain decisions and orders of  
276 the Federal Communications Commission; requiring the  
277 commission, at the request of a party, to assume  
278 jurisdiction over certain complaints before the  
279 Federal Communications Commission; requiring the  
280 commission to adopt rules by a specified date and  
281 provide certification to the Federal Communications  
282 Commission upon such adoption; requiring the  
283 commission to regulate the safety, vegetation  
284 management, repair, replacement, maintenance,  
285 relocation, emergency response, and storm restoration  
286 requirements for certain plants and equipment of  
287 communications services providers; providing an  
288 exception; requiring the commission to adopt rules,  
289 including monetary penalties, by a specified date;  
290 authorizing the commission to access the books and  
291 records of communications services providers for  
292 specified purposes; providing that such information  
293 that contains proprietary confidential business  
294 information retains its confidential or exempt status  
295 when held by the commission; creating s. 366.97, F.S.;  
296 providing legislative findings; requiring the  
297 commission by rule to create a process requiring  
298 advance hardening project notice; requiring attaching  
299 entities to remove pole attachments from redundant  
300 poles within a specified timeframe after receipt of



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301 electronic or written notice from the pole owner;  
302 requiring the commission to provide the form and  
303 requirements for such notice by rule; authorizing a  
304 pole owner or its agent to transfer or relocate pole  
305 attachments of an attaching entity at the entity's  
306 expense under certain circumstances; providing an  
307 exception; requiring that the pole owner and its  
308 directors, officers, agents, and employees be held  
309 harmless under certain circumstances for such actions;  
310 authorizing a pole owner to remove and sell or dispose  
311 of certain abandoned pole attachments; authorizing the  
312 commission to require attaching entities to post  
313 certain security instruments by rule; requiring the  
314 commission to impose monetary penalties for  
315 violations; requiring the commission to provide grants  
316 to construct and install broadband infrastructure in  
317 this state from any monetary penalty collected;  
318 providing construction; requiring the commission to  
319 adopt rules by a specified date; providing a directive  
320 to the Division of Law Revision; providing an  
321 effective date.