HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1221 Broadband Internet Service Providers
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 626

FINAL HOUSE FLOOR ACTION: 105 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1221 passed the House on April 13, 2023, and subsequently passed the Senate on April 26, 2023.

Rural electric cooperatives are electric utilities owned by their customer-members and located primarily in rural areas where, at least historically, the economics of building or installing electrical infrastructure has not attracted investment. To promote economic development, a cooperative in Florida may provide any energy or nonenergy services to its membership. Currently, five of Florida's 18 rural electric cooperatives are engaged in or developing broadband service for their members. Both the state and federal government offer grant funds to entities seeking to expand broadband Internet service into unserved areas.

The term pole attachment refers to the process by which communications services providers can place communications infrastructure on existing electric utility poles. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability. Since 2021, the Public Service Commission (PSC) has had the authority to regulate and enforce rates, charges, terms, and conditions for attachments to poles owned by investor-owned electric utilities. No party yet has initiated proceedings at the PSC under this authority. Attachments to poles owned by rural electric cooperatives are, and have historically been, exempt from regulation.

The bill provides explicit authority for rural electric cooperatives in Florida to "engage in the provision of broadband." The bill defines this phrase to mean:

- Providing broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or
- Accepting broadband grant funding pursuant to the Florida Broadband Opportunity Program or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of the state.

Under the bill, if a rural electric cooperative engages in the provision of broadband, all poles owned by the cooperative are subject to the PSC's pole attachment regulations on the same basis as poles owned by investor-owned electric utilities. The PSC is granted access to the cooperative's books and records to the limited extent necessary to exercise its authority. The bill provides for the continued confidential treatment of certain records received by the PSC under existing public record exemptions The bill provides that it may not be construed to impair the contract rights of parties to an existing pole attachment agreement.

The bill does not impact state or local government revenues or local government expenditures. The bill may increase state government expenditures, but the PSC has indicated that it can handle the expected workload with existing resources.

The bill was approved by the Governor on June 5, 2023, ch. 2023-199, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Regulation of Pole Attachments

The term pole attachment refers to the process by which communications services providers can place communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility and communications services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.[1] The space requested for a pole attachment is typically one foot.

Pole attachments, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers with access to a utility's distribution poles, conduits, and ROW for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.[2]

Congress began regulating pole attachments[3] in 1978.[4] The Telecommunications Act of 1996[5] (the Act) expanded pole attachment rights to telecommunications[6] carriers. The Act requires utilities[7] to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission[8] (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.[9] The Legislation withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.[10] Thus, federal pole attachment regulations apply only to investor-owned electric utilities (IOUs). Municipal and cooperative electric utilities are specifically exempted from federal pole attachment regulations.

The Act permits utilities to deny access where there is insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. In addition to establishing a right of access, the

[1] American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations (last visited Mar. 13, 2021).
[2] Edison Electric Institute, Pole Attachments 101, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Mar. 13, 2021).
[3] 47 U.S.C. § 224(a)(4), defines ''pole attachment'' as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[4] The Pole Attachment Act of 1978 granted utility pole access to cable companies, and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).
[5] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).
[6] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).
[7] 47 U.S.C. § 224(a)(1), defines ''utility'' 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."
[8] The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States' primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, https://www.fcc.gov/about-fcc/what-we-do (last visited Mar 19, 2023).
[9] 47 U.S.C. § 224.
[10] *In the Matter of Implementation of Section 224 of the Act- A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011)

Act provides a rate methodology for "attachments used by telecommunications carriers to provide telecommunications services"[11] in addition to the existing methodology for attachments "used by a cable television system solely to provide cable service.[12]

Federal law broadly preempts the regulation of telecommunications services.[13] However, federal law allows states to exercise reverse preemption over the FCC's jurisdiction of communications infrastructure access,[14] meaning that once a state adopts its own utility pole access rules, the FCC loses jurisdiction over pole attachments to the extent that the state regulates such matters.[15]

Pursuant to section 224(c) of the Act[16], each state that regulates the rates, terms, and conditions for pole attachments must certify to the FCC that:

- It regulates such rates, terms, and conditions; and
- In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services provided by the pole owners.

Furthermore, a state is not considered to regulate the rates, terms, and conditions for pole attachments:

- Unless the state has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments; and
- With respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
    - Within 180 days after the complaint is filed with the state, or
    - Within the applicable period prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

In Florida

In 2021, Florida exercised its power under the Act to assert reverse preemption over the FCC's regulation of pole attachments, directing the Florida Public Service Commission (PSC) to regulate and enforce rates, charges, terms, and conditions for pole attachments, and to ensure that they are just and reasonable. Accordingly, Florida law requires the PSC to adopt rules to administer its new regulatory authority and, in doing so, to consider the interests of the subscribers and users of the services offered through pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.[17] Florida law maintains the federal regulatory exemption for attachments to poles owned by government-owned or cooperative electric utilities.

Florida law provides that the Legislature's intent is to encourage parties to enter into voluntary pole attachment agreements and provides that it may not be construed to prevent parties from voluntarily entering into such agreements without PSC approval. The law requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. The law specifies that a party's right to nondiscriminatory access to a pole is identical to the rights afforded under section 224(f)(1) of the Act,[18] and that a pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of

[11] 47 U.S.C. § 224(e).
[12] 47 U.S.C. § 224(d).
[13] "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).
[14] 47 U.S.C. § 224(c)(1).
[15] Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 486–87 (2020).
[16] 47 U.S.C. § 224(c)
[17] Ch. 2021-191, Laws of Fla., codified at s. 366.04(8), F.S.
[18] 47 U.S.C. s. 224(f)(1) provides for nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by a utility, subject to denial, on a nondiscriminatory basis, only on the grounds of insufficient pole capacity or for safety, reliability, or other engineering purposes.

safety and reliability, and when required by generally applicable engineering purposes. A pole owner must consider relevant construction and reliability standards approved by the PSC when evaluating capacity, safety, reliability, and engineering requirements.

Under Florida law, FCC precedent is not binding upon the PSC. However, the bill requires the PSC to apply the decisions and orders of the FCC and related appellate court decisions when determining just and reasonable pole attachment rates, terms and conditions unless a pole owner or attaching entity establishes by competent substantial evidence that an alternative cost-of-service based pole attachment rate is appropriate and in the public interest.

To help establish precedent on the establishment of pole attachment rates and guide negotiations toward voluntary pole attachment agreements, Florida law authorizes any pole owner or attaching entity to participate in the first five formal administrative proceedings conducted by the PSC to determine pole attachment rates. After the fifth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate. Currently, no party has initiated a pole attachment proceeding at the PSC.

Rural Electric Cooperatives

Rural electric cooperatives are electric utilities that are owned by their consumer-members. These private companies are generally nonprofit, with their principal purpose being to deliver electrical service to their members. Rural electric cooperatives are mostly located in rural areas where, at least historically, the return on investment for building or installing electrical infrastructure was not enough for investor-owned utilities to want to service them.[19]

Historically, rural homes, farms, and businesses were some of the last places to electrify in the United States (U.S.). By the mid-1930's, 90 percent of U.S. urban homes were electrified,[20] however, the opposite was true in rural areas—only one out of 10 rural homes had electric service.[21] This lack of electrical service deeply limited economic development in rural areas of the country. Despite this impact, the costs to electrify most rural areas were usually prohibitive and often thought not economically feasible.[22] In the limited areas where rural electric power was available, often the prices paid by such consumers were far higher than those paid by their urban counterparts.

In 1935, Executive Order 7037, issued by President Franklin Roosevelt, created the Rural Electrification Administration (REA). One year later, Congress passed the Rural Electrification Act (Pub. L. 74–605), codifying the REA and creating a loan program to encourage the growth of rural electrification. Even with these available federal loans, established investor-owned utilities did not have much interest in building rural systems. However, there was significant interest from farmer-based electric cooperatives.[23] By 1939, with assistance from REA funds, 413 rural electric cooperatives had been established in the U.S.,[24] and by 1950, 80 percent of U.S. farms had electric service.[25]

During a reorganization of the United States Department of Agriculture (USDA) in 1994, the REA was replaced with the Rural Utilities Service, which still exists today.[26] According to the National Rural

[19] University of Wisconsin Center for Cooperatives, *Research on the Economic Impact of Cooperatives*, https://reic.uwcc.wisc.edu/electric/ (last visited Mar. 19, 2023).
[20] *Id.*
[21] National Rural Electric Cooperative Association, *History,* https://www.electric.coop/our-organization/history (last visited Mar. 19, 2023).
[22] United States Department of Agriculture, *Celebrating the 80th Anniversary of the Rural Electrification Administration*, Feb. 21, 2017, https://www.usda.gov/media/blog/2016/05/20/celebrating-80th-anniversary-rural-electrification-administration (last visited Mar.19, 2023).
[23] National Rural Electric Cooperative Association, *History, supra* note 21.
[24] University of Wisconsin Center for Cooperatives, *supra* note 19.
[25] *Celebrating the 80th Anniversary of the Rural Electrification Administration, supra* note 22.
[26] University of Wisconsin Center for Cooperatives, *supra* note 19.

Electric Cooperative Association (NRECA), now over 99 percent of U.S. farms have electrical service.[27] Rural electric cooperatives continue to be the most prevalent way for consumers in rural areas to obtain electrical service.[28]

As of 2019, rural electric cooperatives in the U.S. averaged 7.98 customers per mile of line, as compared with 32.4 customers per mile of line for the rest of the electricity industry. In addition, while rural electric cooperatives have ownership of 42 percent of U.S. electricity distribution lines, their electricity sales only represent 12 percent of the nation's overall sales. Rural electric cooperatives have a different customer mix as well. For rural electric cooperatives, 53 percent of their customers are residential, with the remainder being commercial, industrial, and transportation customers—which generally have much higher energy consumption. For the U.S. electric industry at-large, the percentage of residential customers is 38 percent.[29]

These factors lead to rural electric cooperatives receiving significantly less revenue per dollar of capital investment in distribution. Rural electric cooperatives' average revenue for mile of distribution line is $19,135 (versus $79,298 for the rest of the electricity industry) and their cost of distribution plant per customer is $4,219 (versus $3,698).[30] Thus, on a per customer basis, the distribution of electric power in rural areas is higher versus the rest of the industry.

In Florida

In 1937, the REA drafted the Electric Cooperative Corporation Act as a model state law for states to adopt for forming and operating rural electric cooperatives. Florida's first distribution electric cooperatives were formed that same year.[31] At that time, much of Florida's geographic territory lacked electrical service, due to, like most of the U.S., the lack of enough economic development to make providing service worthwhile for existing electric companies.

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives. These cooperatives are represented by the Florida Electric Cooperative Association (FECA).[32] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[33] Much like other areas of the U.S., Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[34]

In addition to providing electric service, cooperatives in Florida are authorized to own and operate water and sewer systems.[35] To promote economic development, a cooperative may provide any energy or nonenergy services to its membership.[36]

Broadband Internet Deployment

[27] National Rural Electric Cooperative Association, *History, supra* note 21.
[28] United States Energy Information Administration, *Today in Energy: August 15, 2019*, https://www.eia.gov/todayinenergy/detail.php?id=40913.
[29] National Rural Electric Cooperative Association, *Fact Sheet: February 2021*, https://www.cooperative.com/programs-services/bts/documents/data/electric-co-op-fact-sheet-update-february-2021.pdf (last visited Mar. 19, 2023).
[30] *Id.*
[31] Seminole Electric Cooperative, *Empowering our Community*, https://www.seminole-electric.com/ (last visited Mar. 19, 2023).
[32] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Mar 19, 2023).
[33] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Mar 19, 2023).
[34] *Id.*
[35] S. 425.04(4), F.S.
[36] S. 425.04 (15), F.S.

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[37] Communities that lack broadband access can have difficulty attracting new capital investment. While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[38] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[39] The recent COVID-19 pandemic amplified the need for broadband Internet access in everyday life. Studies indicate that broadband Internet access matters for jobs, income, business relocation, civic engagement, and health.[40]

Broadband Growth Programs

- Florida Broadband Opportunity Program

Established under s. 288.9962, F.S., the Broadband Opportunity Program (BOP) is a competitive reimbursement program within the Florida Department of Economic Opportunity (DEO).[41] The purpose of the program is to award grants to applicants who seek to expand broadband Internet service to unserved areas of Florida. To operate the program, the Legislature appropriated $400 million in federally funded State and Local Fiscal Recovery Funds (SLFRF) to increase Floridians' access to reliable, affordable, and high-speed internet service.[42]

- Connect America Fund

One of the earliest and most significant federal broadband programs is the Connect America Fund, which is part of the FCC's Universal Service Fund (USF). Started in 2011, the purpose of the fund is to provide subsidies to telecommunications companies to expand telecommunications infrastructure in rural and remote areas of the United States.[43] The Connect America Fund is a "high-cost" program, meaning that it is designed to ensure that consumers in rural, insular, and high cost areas have access to modern telecommunications networks and that services through those networks, like voice and broadband, are available at a cost comparable to that in more developed urban areas.[44] The Connect America Fund is the largest of the USF's programs, and has an annual budget of $4.5 billion.[45]

- Broadband Technology Opportunities Program

The Broadband Technology Opportunities Program (BTOP) is a federal grant program administered by the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce. The BTOP is funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and has an annual budget of $4 billion. The purpose of the program is to "bridge the technological divide" and BTOP projects include deploying broadband Internet infrastructure,

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[37] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report,* at 1 (Feb. 2, 2018), https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Mar. 23, 2023).
[38] FCC, *2021 Broadband Deployment Report* at 63 (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Mar. 23, 2023). For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[39] American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf (last visited Mar. 23, 2023).
[40] *COVID-19 lockdowns expose the digital have-nots in rural areas – here's which policies can get them connected* (Sep. 2, 2020), https://theconversation.com/covid-19-lockdowns-expose-the-digital-have-nots-in-rural-areas-heres-which-policies-can-get-them-connected-144324 (last visited Mar. 23, 2023).
[41] Florida Department of Economic Opportunity, *Broadband Opportunity Program*, https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program (last visited Mar. 19, 2023).
[42] *Id.*
[43] Federal Communications Commission, *Universal Service Monitoring Report*, Feb. 13, 2023, (available at: https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports).
[44] Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund,* https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund#releases (last visited Mar. 19, 2023).
[45] Universal Service Administrative Co., *Program Overview*, https://www.usac.org/high-cost/program-overview/ (last visited Mar 3, 2023).

enhancing and expanding public computer centers, and encouraging the sustainable adoption of broadband service.[46]

- USDA Programs: ReConnect Program and the Rural Broadband Program

The USDA operates two programs aimed at developing broadband in rural areas—the ReConnect Program and the Rural Broadband Program. Though these programs both existed prior to 2021, the Infrastructure Investment and Jobs Act (Public Law 117-58), signed into law on November 15, 2021, provided new funding for both of these programs (and other broadband initiatives). The ReConnect Program received $1.926 billion in funds for grants and loans and the Rural Broadband Program received $74 million in funds for loans.[47]

The purpose of the ReConnect Program is to offer loans, grants, and loan-grant combinations to facilitate broadband deployment in rural areas that currently do not have sufficient access to broadband. The entities eligible to apply for the Reconnect Program include:

- Corporations, limited liability companies, and limited liability partnerships;
- State and local governments;
- U.S. territories and possessions; and
- Indian tribes, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b).48

Reconnect grants may be used for:

- Construction or improvement of facilities required to provide fixed terrestrial broadband services;
- Funding of reasonable pre-application expenses; and
- Funding the acquisition of an existing telecommunications system that does not currently provide sufficient access to broadband.[49]

The Rural Broadband Program offers funds to help construct, improve, or acquire facilities and equipment needed to provide broadband to rural areas. The entities eligible to apply for the program are:

- Corporations
- Limited liability companies
- Cooperative or mutual organizations
- State and local governments
- Indian tribes and tribal organizations

For the most recent years prior to 2021, Congress only appropriated funds to the Rural Broadband Program for loans. However, with the increase in funding under the Infrastructure Investment and Jobs Act, funding for grants and loan guarantees is also now available in the program.[50]

While the USDA's Reconnect and Rural programs are similar in their purpose, a key distinction lies in the standards for eligible service areas. For the ReConnect Program, eligible service areas exist where at least 90% of households lack sufficient access to broadband with at least 100 Mbps download and 20 Mbps upload speed (100/20 Mbps service). For the Rural Broadband Program, the standard for

[46] National Telecommunications and Information Administration, *Broadband Technology Opportunities Program,* https://ntia.gov/category/broadband-technology-opportunities-program#:~:text=The%20Broadband%20Technology%20Opportunities%20Program,in%20communities%20across%20the%20country (last visited Mar. 19, 2023).
[47] Congressional Research Service, *Infrastructure Investment and Jobs Act: Funding for USDA Rural Broadband Programs*, Nov. 19. 2021, https://crsreports.congress.gov/product/pdf/IF/IF11918 (last visited Mar. 19, 2023).
[48] United States Department of Agriculture, *ReConnect Program*, https://www.usda.gov/reconnect/program-overview (last visited Mar. 19, 2023).
[49] *Id.*
[50] Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund,* supra note 4447.

eligibility is if the area in question does not have at least 50% of households with at least 25 Mbps download and 3 Mbps upload speed (25/3 Mbps service).

Rural Electric Cooperative Engagement in Broadband

According to the NRECA, about 200 rural electric cooperatives are currently providing or building out broadband service. In addition, the NRECA states that 200 additional rural electric cooperatives are "assessing the feasibility of providing service to more than 6 million households in co-op service areas that don't have access to high-speed internet service."[51] To support its members who are or would like to be engaged in the broadband business, the NRECA launched a new level of service for its members in July 2022 called NRECA Broadband.[52] The stated purpose of NRECA Broadband is to offer federal policy and regulatory advocacy; communication, events, and education; and operations and technology support.[53]

While rural electric cooperatives have experience in operating a monopoly electric utility, many have little institutional experience in operating in a non-monopoly competitive market in general or in broadband telecommunications specifically. Thus, these companies can face challenges in learning how to market and provide broadband services.[54]

Currently, five of Florida's 18 rural electric cooperatives, are engaged in or developing broadband service:

- Glades Electric Cooperative (5.1 members per mile of line).
- Central Florida Electric Cooperative (6.34 members per mile of line).
- Suwannee Valley Electric Cooperative (4.5 members per mile of line).
- Tri-County Electric Cooperative (4.48 members per mile of line).
- Escambia River Electric Cooperative (6.94 members per mile of line).

According to the FECA, these five cooperatives are the most rural in nature of the cooperatives in Florida.[55]

Confidentiality of Records Provided to the PSC

Florida law provides public record exemptions for records received by the PSC which contain proprietary confidential business information.[56] For records provided to the PSC under chapter 366, Florida Statutes, which includes the PSC's authority to regulate pole attachments, a person must

[51] National Rural Electric Cooperatives Association, *Broadband,* https://www.electric.coop/issues-and-policy/broadband (last visited Mar. 19, 2023).
[52] *Id.*
[53] Cooperative.com, *NRECA Broadband*, https://www.cooperative.com/topics/telecommunications-broadband/nreca-broadband/Pages/default.aspx (last visited Mar. 19, 2023).
[54] National Rural Electric Cooperatives Association*, Along Those Lines: What It Takes for Electric Co-ops to Enter the Broadband Space*, Jan 24, 2023, https://www.electric.coop/along-those-lines-what-it-takes-for-electric-co-ops-to-enter-the-broadband-space.
[55] Senate Analysis of CS/SB 626 (2023), p. 15 (March 8, 2023), citing an email from Drew Love, Director of Government Affairs, Florida Electric Cooperatives Association, to Senate Regulated Industries Staff (Mar. 6, 2023).
[56] *See, e.g.*, ss. 366..093 and 364.183, F.S. For purposes of these exemptions, "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

request and the PSC must find that such records contain proprietary confidential business information. For records provided to the PSC under chapter 364, F.S., a person need only claim that such records are proprietary confidential business information, with such claims subject to challenge at the PSC.[57]

Effect of the Bill

The bill provides explicit authority for rural electric cooperatives in Florida to "engage in the provisions of broadband." The bill defines this phrase to mean:

- Providing broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or
- Accepting broadband grant funding pursuant to the Florida Broadband Opportunity Program or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of the state.

Under the bill, if a rural electric cooperative engages in the provision of broadband, all poles owned by the cooperative are subject to the PSC's pole attachment regulations on the same basis as poles owned by investor-owned electric utilities. The PSC is granted access to the cooperative's books and records to the limited extent necessary to exercise this authority. Upon request of the cooperative, the PSC must maintain the confidential or exempt status of any records it receives that are proprietary confidential business information under existing public records exemptions in chapter 366, F.S., (which specifies the PSC's authority over attachments to investor-owned utility poles) or chapter 364, F.S., (which, under the bill, extends the PSC's authority to poles owned by rural electric cooperatives that provide broadband service).

The bill provides that it may not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before July 1, 2023.

[57] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may increase state government expenditures. However, the PSC has indicated that it can handle the expected increased workload within existing resources.[58]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The financial and legal responsibilities of parties to rural electric cooperative pole attachment arrangements in Florida may substantially change depending on the PSC's implementation of new pole attachment regulatory authority under this bill.

D. FISCAL COMMENTS:

None.

[58] Florida Public Service Commission, Agency Analysis of 2023 HB 1221, p. 2 (Mar. 3, 2023).