

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1147 Broadband
SPONSOR(S): Tomkow and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1218

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1147 passed the House on February 15, 2024, and subsequently passed the Senate on February 22, 2024.

Broadband Internet service has become an essential component of daily life, yet some parts of Florida lack access to this service. Communities that lack broadband access can have difficulty attracting new capital investment. To help address this issue, the Legislature, among other things, implemented a promotional rate for the attachment of broadband facilities to poles owned by municipal electric utilities. The promotional rate requires municipal electrical utilities to offer broadband Internet service providers a discounted rate of \$1 per attachment per year for any new pole attachment necessary to make broadband service available to an unserved or underserved consumer within the utility's territory. The promotional rate expires on July 1, 2024.

The bill extends the expiration date of the promotional rate from July 1, 2024, to December 31, 2028.

The bill does not appear to impact state government revenues or expenditures. The bill may have a negative impact on local government revenues as a result of the discounted pole attachment charges, though the impact will be dependent on utilization of the program by broadband providers. The discounted pole attachment charges may provide an incentive to broadband Internet service providers for additional investment in broadband infrastructure to reach unserved areas and unserved customers in this state.

The bill was approved by the Governor on April 15, 2024, ch. 2024-98, L.O.F., and will become effective on June 30, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current 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 telecommunications service providers with access to a utility’s distribution poles, conduits, and right-of-way (ROW) for:

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

Congress began regulating pole attachments³ in 1978.⁴ The Telecommunications Act of 1996⁵ (the Act) expanded pole attachment rights to telecommunications⁶ carriers. The Act requires utilities⁷ to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission⁸ (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.

¹ American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (June 2023) <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations> (last visited Feb. 5, 2024).

² Evari GIS Consulting, *Joint Use Pole Audit*, available at <https://www.evarigisconsulting.com/joint-use-pole-audit> (last visited Feb. 5, 2024).

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. L. 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 “Utility” is defined 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.” 47 U.S.C. § 224(a)(1).

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 Feb. 5, 2024).

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).

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 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

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. In 2023, with the passage and enactment of HB 1221 (Broadband Internet Service Providers), this authority was expanded to the regulation of attachments to poles owned by rural electrical cooperatives engaged in the provision of broadband services.¹⁶ Presently, s. 366.04(8), F.S., regulates pole attachments for public utilities and such rural electric cooperatives.¹⁷ The PSC does not, however, regulate pole attachments for poles owned by municipal utilities.

Attachment of Broadband Facilities to Municipal Electric Utility Poles

The Legislature passed CS/CS/HB 1239 (Broadband Internet Infrastructure) in 2021, creating s. 288.9963, F.S., and providing terms for the attachment of certain broadband facilities to poles owned by municipal electric utilities.

Under this law, a broadband provider¹⁸ is currently entitled to receive a promotional rate of \$1 per wireline attachment¹⁹ per pole per year for any new attachment necessary to make broadband service²⁰ available to an unserved²¹ or underserved²² end user within a municipal electric utility service territory.²³

A broadband provider who wishes to make wireline attachments subject to this promotional rate must²⁴:

- Submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved and underserved end users;

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 Chapter 2023-199, Laws of Fla.

¹⁷ Section 364.391, F.S., provides that if a rural electric cooperative engages in the provision of broadband, all poles owned by that cooperative are subject to regulation under s. 366.04(8), F.S., on the same basis as if such cooperative were a public utility under that subsection. Sections 366.04(9) and 366.97, F.S., also provide pole attachment regulations relating to poles owned by public utilities.

¹⁸ “Broadband provider” means a person or entity who provides fixed broadband Internet service. S. 288.9963(2)(a), F.S.

¹⁹ “Wireline attachment” means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole. S. 288.9963(2)(f), F.S.

²⁰ “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. S. 288.9963(2)(b), F.S.

²¹ “Unserved” means that there is no retail access to the Internet at speeds of at least 10 megabits per seconds for downloading and 1 megabits per second for uploading. S. 288.9963(2)(e), F.S.

²² “Underserved” means there is no retail access to the Internet at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading. S. 288.9963(2)(d), F.S.

²³ S. 288.9963(3), F.S.

²⁴ S. 288.9963(3)(a), F.S.

- Include with this application the information necessary to identify which unserved or underserved end users within the municipal electric utility's service territory will gain access to broadband service; and
- Provide a copy of both of the above to the Florida Office of Broadband.

A broadband provider making a wireline attachment application under the promotional rate must make a reasonable effort to make broadband service available to the unserved or underserved customers identified in the application. A provider who fails to do so within 12 months may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers to the municipal electric utility.

The promotional rate expires on July 1, 2024.²⁵

Effect of the Bill

The bill extends the expiration date of the \$1 wireline attachment promotional rate from July 1, 2024, to December 31, 2028. The bill also extends the \$1 wireline attachment promotional rate for any currently existing wireline attachments made under the promotional rate program from July 1, 2024, to December 31, 2028.

The bill provides an effect date of June 30, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative impact on local government revenues as a result of the discounted pole attachment charges. Any impact is dependent on utilization of the program by broadband providers.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Broadband Internet providers will benefit from discounted rates for certain attachments made to municipal electric utility poles over the next four years. These savings may provide incentives for additional investment in broadband infrastructure to reach unserved areas and unserved customers in this state. This may result in increased economic activity in areas that currently lack access to broadband Internet service.

²⁵ S. 288.9963(3)(e), F.S.

D. FISCAL COMMENTS:

None.