

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

26 providers to seek any available remedies; providing an
27 effective date.

28
29 WHEREAS, although this state is a national leader in
30 private sector broadband investment, including billions of
31 dollars invested by existing service providers, estimates show
32 that as many as 804,000 residents lack access to the services,
33 particularly in rural areas where the cost to deploy facilities
34 is significantly higher than in more densely populated areas,
35 and

36 WHEREAS, the lack of advanced communication capabilities,
37 broadband facilities, and services in certain areas deprives
38 residents of access to opportunities, and

39 WHEREAS, the Legislature finds that it is in the public
40 interest of this state to encourage private-sector investment in
41 broadband deployment and upgrades, encourage greater
42 participation and access for all residents, and remove
43 regulatory and economic barriers to such investment, and

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

49 WHEREAS, the Legislature finds that reasonable rates,
50 terms, and conditions for access and use of municipal utility

51 poles by broadband service providers are essential for the
 52 deployment, upgrade, and maintenance of broadband service, and
 53 WHEREAS, it is critical that such access rates, terms, and
 54 conditions be reasonable and fully compensatory, as approved by
 55 the federal pole attachment framework imposed by the
 56 Communications Act of 1934, as amended, 47 U.S.C. s. 224, and
 57 the regulations of the Federal Communications Commission
 58 governing utilities whose pole attachments are regulated under
 59 federal law, NOW, THEREFORE,

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

62

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

65 Section 2. Section 364.0137, Florida Statutes, is created
 66 to read:

67 364.0137 Broadband service infrastructure.—

68 (1) The Legislature finds that just, reasonable, and
 69 nondiscriminatory rates, terms, and conditions for the access
 70 and use of municipal electric utility poles by broadband service
 71 providers is essential to deploy, upgrade, and maintain
 72 broadband service to residents of the state. It is critical that
 73 municipal electric utility pole access and use rates are just,
 74 reasonable, nondiscriminatory, and fully compensatory, which may
 75 be achieved under the federal law framework applicable to

76 utility poles owned and operated by investor-owned utilities.
 77 The terms and conditions associated with the access and use of
 78 utility poles must be consistent with 47 U.S.C. s. 224, the
 79 Communications Act of 1934, as amended, and the regulations of
 80 the Federal Communications Commission, as those regulations
 81 existed on July 1, 2021.

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

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

86 (b) "Broadband provider" means a person who provides
 87 broadband service, and includes a person who provides or offers
 88 additional services to the public in addition to broadband
 89 service.

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

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

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

99 (a) Shall provide broadband providers with access to any
 100 to utility poles it owns or operates and adopt rates, terms, and

101 conditions for such access which are consistent with the
102 provisions of 47 U.S.C. s. 224 and any Federal Communications
103 Commission regulations and decisions adopted thereunder, as such
104 regulations and decisions existed on July 1, 2021. The rates,
105 terms, and conditions must be nondiscriminatory, just, and
106 reasonable and may not favor a pole owner or an affiliate of the
107 pole owner.

108 (b)1. Shall ensure that any rate or fee that the municipal
109 electric utility charges to a broadband provider for an
110 attachment to a utility pole does not:

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

113 b. Exceed the annual recurring rate calculated in
114 accordance with the cable service rate formula established by 47
115 U.S.C. s. 224(d) or any Federal Communications Commission rule,
116 regulation, or decision adopted thereunder, as such existed on
117 July 1, 2021.

118 2. Shall maintain and make available to a broadband
119 provider all records necessary to calculate the rate it charges
120 to the provider. The records must include:

121 a. All costs associated with utility poles; any
122 improvements or reinforcements thereto; and any appurtenances,
123 including costs associated with storm hardening efforts, which
124 must be identified with particularity.

125 b. Identification of the actual height, usable space, and

126 appurtenances associated with each utility pole.

127 c. Information regarding any ancillary utility poles and
128 the costs associated with such poles, which are separately
129 identifiable from the principal utility poles they support.

130 d. To the extent the accumulated depreciation for a
131 utility pole which is used to calculate the rate is based on
132 records specific to pole plant rather than based on proration of
133 accumulated depreciation tracked at a higher aggregated plant
134 amount, sufficiently detailed data to support the pole specific
135 figure.

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

143 1. If necessary to accommodate a broadband provider's new
144 attachment, the municipal electric utility shall rearrange,
145 expand, replace, or otherwise safely reengineer any utility pole
146 upon the request of the broadband provider. If the municipal
147 electric utility is required to replace a utility pole pursuant
148 to this subparagraph, the municipal electric utility may not
149 require a broadband provider to reimburse any costs associated
150 with such pole replacement beyond the recovery of its actual and

151 reasonable costs of advancing the retirement of the existing
152 utility pole. Such costs shall be measured by all of the
153 following:

154 a. The net book value of the existing utility pole.

155 b. The incremental cost, if any, of installing a utility
156 pole with greater capacity than the utility pole the municipal
157 electric utility would have installed in the normal course of
158 its operations.

159 c. Any other incremental costs proved by the municipal
160 electric utility, provided that such incremental costs do not
161 include any costs associated with a utility pole the utility
162 would have installed at the same location.

163 2. The municipal electric utility may not prohibit the
164 broadband provider from using boxing techniques, extension arms,
165 attachments below existing attachments where space is
166 unavailable above existing attachments, temporary attachments,
167 or other methods or equipment, provided that such use complies
168 with the National Electric Safety Code or other applicable
169 safety codes.

170 3. With respect to a utility pole replacement, the
171 municipal electric utility must complete such pole replacement
172 and any other work necessary to accommodate the broadband
173 provider's attachment to the replaced pole within 90 days after
174 receiving a complete attachment request from a broadband
175 provider.

176 (d) May not require a broadband provider to comply with
177 any utility pole attachment specifications that exceed the
178 specifications in the National Electric Safety Code, applicable
179 fire safety codes, or any building code or similar code of
180 general applicability for the protection of public health,
181 safety, or welfare which was adopted by the applicable local
182 governmental jurisdiction before the broadband provider filed a
183 utility pole attachment application. However, this section may
184 not be construed to expand the power of any local governmental
185 jurisdiction.

186 (4) A municipal electric utility or broadband provider may
187 submit a written request to negotiate any agreement or to amend,
188 modify, or renew any existing agreement addressing attachments
189 by the broadband provider to conform such agreements to this
190 section. The parties must negotiate in good faith for at least
191 60 days after the written request, after which either party may
192 petition the circuit court to determine rates, terms, and
193 conditions for the agreements consistent with this section. The
194 court shall make a determination within 180 days after the
195 filing of the petition for that determination. The court's
196 determination applies retroactively to attachments between the
197 date of the written request to negotiate and the date of the
198 commission's determination, and applies to the continuing terms
199 of all existing attachments that were installed before the
200 written request. Between the date of the written request to

201 negotiate and the date of the court's determination:

202 (a) The terms and conditions of any existing agreement
203 addressing such attachments apply, subject to true-up, to put
204 the parties in the positions in which they would have been had
205 the court's determination been in effect on the date of the
206 written request to negotiate.

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

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

221 Section 3. This act shall take effect July 1, 2021.