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LEGISLATIVE ACTION

Senate

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House

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04/26/2021 11:45 AM

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Senator Albritton moved the following:

Senate Amendment (with title amendment)

Delete lines 81 - 299

and insert:

(5) "Communications services provider" means an entity providing communications services as defined s. 202.11(1).

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



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12 facilities or a pole with no electrical facilities attached.

13 (7) "Pole attachment" means any attachment by a public
14 utility, local exchange carrier communications services
15 provider, broadband provider, or cable television operator to a
16 pole, duct, conduit, or right-of-way owned or controlled by a
17 pole owner.

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

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

23 (a) Near or adjacent to a new pole that is intended to
24 replace the old pole from which some or all of the pole
25 attachments have not been removed and transferred to the new
26 pole;

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

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

33 Section 3. Subsections (8) and (9) are added to section
34 366.04, Florida Statutes, to read:

35 366.04 Jurisdiction of commission.—

36 (8) (a) The commission shall regulate and enforce rates,
37 charges, terms, and conditions of pole attachments, including
38 the types of attachments regulated under 47 U.S.C. s. 224(a)(4),
39 attachments to streetlight fixtures, attachments to poles owned
40 by a public utility, or attachments to poles owned by a



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41 communications services provider, to ensure that such rates,
42 charges, terms, and conditions are just and reasonable. The
43 commission's authority under this subsection includes, but is
44 not limited to, the state regulatory authority referenced in 47
45 U.S.C. s. 224(c).

46 (b) In the development of rules pursuant to paragraph (g),
47 the commission shall consider the interests of the subscribers
48 and users of the services offered through such pole attachments,
49 as well as the interests of the consumers of any pole owner
50 providing such attachments.

51 (c) It is the intent of the Legislature to encourage
52 parties to enter into voluntary pole attachment agreements, and
53 this subsection may not be construed to prevent parties from
54 voluntarily entering into pole attachment agreements without
55 commission approval.

56 (d) A party's right to nondiscriminatory access to a pole
57 under this subsection is identical to the rights afforded under
58 47 U.S.C. s. 224(f) (1). A pole owner may deny access to its
59 poles on a nondiscriminatory basis when there is insufficient
60 capacity, for reasons of safety and reliability, and when
61 required by generally applicable engineering purposes. A pole
62 owner's evaluation of capacity, safety, reliability, and
63 engineering requirements must consider relevant construction and
64 reliability standards approved by the commission.

65 (e) The commission shall hear and resolve complaints
66 concerning rates, charges, terms, conditions, voluntary
67 agreements, or any denial of access relative to pole
68 attachments. Federal Communications Commission precedent is not
69 binding upon the commission in the exercise of its authority



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70 under this subsection. When taking action upon such complaints,
71 the commission shall establish just and reasonable cost-based
72 rates, terms, and conditions for pole attachments and shall
73 apply the decisions and orders of the Federal Communications
74 Commission and any appellate court decisions reviewing an order
75 of the Federal Communications Commission regarding pole
76 attachment rates, terms, or conditions in determining just and
77 reasonable pole attachment rates, terms, and conditions unless a
78 pole owner or attaching entity establishes by competent
79 substantial evidence pursuant to proceedings conducted pursuant
80 to ss. 120.569 and 120.57 that an alternative cost-based pole
81 attachment rate is just and reasonable and in the public
82 interest.

83 (f) In the administration and implementation of this
84 subsection, the commission shall authorize any petitioning pole
85 owner or attaching entity to participate as an intervenor with
86 full party rights under chapter 120 in the first four formal
87 administrative proceedings conducted to determine pole
88 attachment rates under this section. These initial four
89 proceedings are intended to provide commission precedent on the
90 establishment of pole attachment rates by the commission and
91 help guide negotiations toward voluntary pole attachment
92 agreements. After the fourth such formal administrative
93 proceeding is concluded by final order, parties to subsequent
94 pole attachment rate proceedings are limited to the specific
95 pole owner and pole attaching entities involved in and directly
96 affected by the specific pole attachment rate.

97 (g) The commission shall propose procedural rules to
98 administer and implement this subsection. The rules must be



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99 proposed for adoption no later than January 1, 2022, and, upon
100 adoption of such rules, shall provide its certification to the
101 Federal Communications Commission pursuant to 47 U.S.C. s.
102 224(c) (2).

103 (9) (a) The commission shall regulate the safety, vegetation
104 management, repair, replacement, maintenance, relocation,
105 emergency response, and storm restoration requirements for poles
106 of communication services providers. This subsection does not
107 apply to a communications services provider that owns no poles.

108 (b) The commission shall adopt rules to administer and
109 implement this subsection. The rules must be proposed for
110 adoption no later than April 1, 2022, and must address at least
111 the following:

112 1. Mandatory pole inspections, including repair or
113 replacement; vegetation management requirements for poles owned
114 by providers of communications services; and

115 2. Monetary penalties to be imposed upon any communications
116 services provider that fails to comply with any such rule of the
117 commission. Monetary penalties imposed by the commission must be
118 consistent with s. 366.095.

119 (c) The commission may access the books and records of
120 communications services providers to the limited extent
121 necessary to perform its functions and to exercise its authority
122 under subsection (8), this subsection, and s. 366.97(4). Upon
123 request by a communications services provider, any records that
124 are received by the commission under this paragraph which are
125 proprietary confidential business information under s. 364.183
126 or s. 366.093 shall retain their status as confidential or
127 exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1



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128 of the State Constitution.

129 Section 4. Section 366.97, Florida Statutes, is created to
130 read:

131 366.97 Redundant poles; transfer of ownership.-

132 (1) Pole owners shall provide at least 180 calendar days'
133 electronic or written advance notice to affected attaching
134 entities of major hardening projects the purpose of which is to
135 replace poles to ensure the poles meet extreme wind loading
136 requirements. The advance hardening project notice must include:

137 (a) The scope of the major hardening project, to the extent
138 determined, the locations of the affected poles, the expected
139 start date, and the expected completion date of the major
140 hardening project; and

141 (b) The date, time, and location of a field meeting for the
142 pole owner and attaching entities to review and discuss the
143 planned major hardening project details, including the types of
144 replacement poles to be used. The field meeting must occur no
145 sooner than 15 calendar days after the date of the notice and no
146 later than 60 calendar days after the notice and, at a minimum,
147 must include sufficient information to enable the attaching
148 entity to locate the affected poles and identify the owner of
149 any facilities attached to the poles.

150 (2) (a) An attaching entity must remove its pole attachments
151 from a redundant pole within 180 calendar days after receipt of
152 an electronic or a written notice from the pole owner requesting
153 such removal. A pole owner may use a joint use notification
154 software program to accomplish such written or electronic
155 removal notice.

156 (b) If an attaching entity fails to remove a pole



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157 attachment pursuant to paragraph (a), except to the extent
158 excused by an event of force majeure or other good cause as
159 agreed to by the parties or as determined by the commission or
160 its designee within 30 calendar days after the 180 calendar-day
161 period under subsection (a), the pole owner or its agent may
162 transfer or relocate the pole attachment to the new pole at the
163 noncompliant attaching entity's expense. This subsection does
164 not apply to an electric utility's pole attachments. An
165 attaching entity shall submit payment to the pole owner within
166 60 days after receipt of the pole owner's invoice for transfer
167 or relocation of the pole attachments. A pole owner may seek to
168 enforce its right to payment under this paragraph in circuit
169 court and, if it prevails, is entitled to prejudgment interest
170 at the prevailing statutory rate and reasonable attorney fees
171 and court costs. Upon receipt by the pole owner of written
172 notice, the attaching entity that fails to comply with this
173 subsection shall indemnify, defend, and hold harmless the pole
174 owner and its directors, officers, agents, and employees from
175 and against all liability, except to the extent of any finding
176 of negligence or willful misconduct, including attorney fees and
177 litigation costs, arising in connection with the transfer of the
178 pole attachment from a redundant pole to a new pole by the pole
179 owner.

180 (c) If a pole attachment is abandoned by an attaching
181 entity that fails to remove or transfer its attachments in
182 accordance with this section, the pole owner or its agent may
183 remove the pole attachment at the noncompliant attaching
184 entity's expense and may sell or dispose of the pole attachment,
185 except to the extent the attaching entity's noncompliance is



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186 excused by an event of force majeure or other good cause as
187 determined by the commission. An attaching entity shall submit
188 payment to the pole owner within 60 days after receipt of the
189 pole owner's invoice. A pole owner may seek to enforce its right
190 to payment under this paragraph in circuit court and, if it
191 prevails, is entitled to prejudgment interest at the prevailing
192 statutory rate and reasonable attorney fees and court costs.
193 Upon receipt by the pole owner of written notice, the
194 noncompliant attaching entity shall indemnify, defend, and hold
195 harmless the pole owner and its directors, officers, agents, and
196 employees from and against all liability, except to the extent
197 of any finding of negligence or willful misconduct, including
198 attorney fees and litigation costs, arising in connection with
199 the removal, transfer, sale, or disposal of the pole attachments
200 from a redundant pole by the pole owner.

201 (3) Upon petition by a pole owner or an attaching entity,
202 the commission may issue orders enforcing this section which do
203 not expressly relate to circuit court jurisdiction.

204 (4) This section may not be construed to do any of the
205 following:

206 (a) Prevent a party at any time from entering into a
207 voluntary agreement authorizing a pole owner to remove an
208 attaching entity's pole attachment. It is the intent of the
209 Legislature to encourage parties to enter into such voluntary
210 agreements without commission approval.

211 (b) Impair the contract rights of a party to a valid pole
212 attachment agreement in existence before the effective date of
213 this act.

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

216 And the title is amended as follows:

217 Delete lines 17 - 62

218 and insert:

219 to establish cost-based rates, charges, terms, and
220 conditions for pole attachments and apply certain
221 decisions and orders of the Federal Communications
222 Commission; requiring the commission to authorize
223 certain parties to participate as an intervenor in a
224 specified number of administrative proceedings;
225 requiring the commission to adopt rules by a specified
226 date and provide certification to the Federal
227 Communications Commission upon such adoption;
228 requiring the commission to regulate the safety,
229 vegetation management, repair, replacement,
230 maintenance, relocation, emergency response, and storm
231 restoration requirements for poles of communications
232 services providers; providing an exception; requiring
233 the commission to adopt rules, including monetary
234 penalties, by a specified date; authorizing the
235 commission to access the books and records of
236 communications services providers for specified
237 purposes; providing that such information that
238 contains proprietary confidential business information
239 retains its confidential or exempt status when held by
240 the commission; creating s. 366.97, F.S.; requiring
241 pole owners to give advance notice to affected
242 attaching entities of hardening projects; requiring
243 attaching entities to remove pole attachments from



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244 redundant poles within a specified timeframe after
245 receipt of electronic or written notice from the pole
246 owner; authorizing a pole owner or its agent to
247 transfer or relocate pole attachments of an attaching
248 entity at the entity's expense under certain
249 circumstances; providing an exception; requiring
250 attaching entities to submit payment within a
251 specified timeframe; authorizing pole owners to seek
252 enforcement of such payment; requiring that the pole
253 owner and its directors, officers, agents, and
254 employees be held harmless under certain circumstances
255 for such actions; authorizing a pole owner to remove
256 and sell or dispose of certain abandoned pole
257 attachments; authorizing the commission to issue
258 orders for the removal or transfer of pole attachments
259 by noncompliant attaching entities upon petition by a
260 pole owner; providing construction; providing a
261 directive to the Division of Law