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LEGISLATIVE ACTION

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

1       **Senate Substitute for Amendment (529128) (with title**  
2 **amendment)**

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4       Delete everything after the enacting clause  
5 and insert:

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

8       120.80 Exceptions and special requirements; agencies.—

9       (13) FLORIDA PUBLIC SERVICE COMMISSION.—

10       (g) Rules adopted by the Florida Public Service Commission



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11 to implement ss. 366.04(8) and (9) and 366.97 are not subject to  
12 s. 120.541.

13 Section 2. Subsections (4) through (9) are added to section  
14 366.02, Florida Statutes, to read:

15 366.02 Definitions.—As used in this chapter:

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

20 (5) "Communications services" has the same meaning as in s.  
21 202.11(1).

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

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

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

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

38 (a) Within 50 feet of a new pole that is intended to  
39 replace the old pole from which some or all of the pole



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40 attachments have not been removed and transferred to the new  
41 pole;

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

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

48 Section 3. Subsections (8) and (9) are added to section  
49 366.04, Florida Statutes, to read:

50 366.04 Jurisdiction of commission.—

51 (8) (a) The commission shall regulate and enforce rates,  
52 charges, terms, and conditions of pole attachments, including  
53 the types of attachments regulated under 47 U.S.C. s. 224(a)(4),  
54 attachments to streetlight fixtures, attachments to poles owned  
55 by a public utility, 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.

79 (e) The commission shall hear and resolve complaints  
80 concerning rates, charges, terms, conditions, voluntary  
81 agreements, or any denial of access relative to pole attachments  
82 with regard to the types of attachments regulated under 47  
83 U.S.C. s. 224, attachments to streetlight fixtures, or  
84 attachments owned by a communications services provider. Federal  
85 Communications Commission precedent is not binding upon the  
86 commission in the exercise of its authority under this  
87 subsection. When taking action upon such complaints, the  
88 commission shall establish just and reasonable cost-based rates,  
89 terms, and conditions for pole attachments and shall apply the  
90 decisions and orders of the Federal Communications Commission  
91 and any appellate court decisions reviewing an order of the  
92 Federal Communications Commission regarding pole attachment  
93 rates, terms, or conditions in determining just and reasonable  
94 pole attachment rates, terms, and conditions unless a pole owner  
95 or attaching entity establishes by competent substantial  
96 evidence pursuant to proceedings conducted pursuant to ss.  
97 120.569 and 120.57 that an alternative cost of service-based



98 pole attachment rate is appropriate and in the public interest.

99 (f) In the administration and implementation of this  
100 subsection, the commission shall authorize any petitioning pole  
101 owner or attaching entity to participate as an intervenor with  
102 full party rights under chapter 120 in the first five formal  
103 administrative proceedings conducted to determine pole  
104 attachment rates under this section. These initial five  
105 proceedings are intended to provide commission precedent on the  
106 establishment of pole attachment rates by the commission and  
107 help guide negotiations toward voluntary pole attachment  
108 agreements. After the fifth such formal administrative  
109 proceeding is concluded by final order, parties to subsequent  
110 pole attachment rate proceedings are limited to the specific  
111 pole owner and pole attaching entities involved in and directly  
112 affected by the specific pole attachment rate.

113 (g) The commission shall adopt procedural rules by January  
114 1, 2022, to administer and implement this subsection and, upon  
115 adoption of such rules, shall provide its certification to the  
116 Federal Communications Commission pursuant to 47 U.S.C. s.  
117 224(c) (2) .

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

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

126 1. Mandatory pole inspections, including repair or



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127 replacement; vegetation management requirements for poles owned  
128 by providers of communications services; and

129 2. Monetary penalties to be imposed upon any communications  
130 services provider that fails to comply with any such rule of the  
131 commission. Monetary penalties imposed by the commission must be  
132 consistent with s. 366.095.

133 (c) The commission may access the books and records of  
134 communications services providers to the limited extent  
135 necessary to perform its functions and to exercise its authority  
136 under subsection (8), this subsection, and s. 366.97(4). Upon  
137 request by a communications services provider, any records that  
138 are shown and found to be proprietary confidential business  
139 information that is confidential or exempt from disclosure under  
140 s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution  
141 which are received by the commission under this paragraph shall  
142 retain their confidential or exempt status when held by the  
143 commission.

144 Section 4. Section 366.97, Florida Statutes, is created to  
145 read:

146 366.97 Redundant poles; transfer of ownership.—

147 (1) The commission by rule shall determine a process by  
148 which pole owners shall provide at least 180 calendar days'  
149 electronic or written advance notice to affected attaching  
150 entities of major hardening projects the purpose of which is to  
151 replace poles to ensure the poles meet extreme wind loading  
152 requirements. The advance hardening project notice must include:

153 (a) The scope of the major hardening project, to the extent  
154 determined, the locations of the affected poles, the expected  
155 start date, and the expected completion date of the major



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156 hardening project; and

157 (b) The date, time, and location of a field meeting for the  
158 pole owner and attaching entities to review and discuss the  
159 planned major hardening project details, including the types of  
160 replacement poles to be used. The field meeting must occur no  
161 sooner than 15 calendar days after the date of the notice and no  
162 later than 60 calendar days after the notice and, at a minimum,  
163 must include sufficient information to enable the attaching  
164 entity to locate the affected poles and identify the owner of  
165 any facilities attached to the poles.

166 (2) (a) An attaching entity must remove its pole attachments  
167 from a redundant pole within 180 calendar days after receipt of  
168 an electronic or a written notice from the pole owner requesting  
169 such removal. The commission shall determine by rule the  
170 sufficiency of, and requirements for, such removal notice and  
171 may consider the use of a joint use notification software  
172 program to accomplish such removal notice.

173 (b) If an attaching entity fails to remove a pole  
174 attachment pursuant to paragraph (a), except to the extent  
175 excused by an event of force majeure or other good cause as  
176 determined by the commission, the pole owner or its agent may  
177 transfer or relocate the pole attachment to the new pole at the  
178 noncompliant attaching entity's expense. This subsection does  
179 not apply to an electric utility's pole attachments. An  
180 attaching entity shall submit payment to the pole owner within  
181 60 days after receipt of the pole owner's invoice. A pole owner  
182 may seek to enforce its right to payment under this paragraph in  
183 circuit court and is entitled to prejudgment interest at the  
184 prevailing statutory rate and reasonable attorney fees and court



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185 costs. Upon receipt by the pole owner of written notice that  
186 complies with the commission rule, the noncompliant attaching  
187 entity shall indemnify, defend, and hold harmless the pole owner  
188 and its directors, officers, agents, and employees from and  
189 against all liability, except to the extent of any finding of  
190 negligence or willful misconduct, including attorney fees and  
191 litigation costs, arising in connection with the transfer of the  
192 pole attachment from a redundant pole to a new pole by the pole  
193 owner.

194 (c) If a pole attachment is no longer in use by a  
195 noncompliant attaching entity, the pole owner or its agent may  
196 remove the pole attachment at the noncompliant attaching  
197 entity's expense and may sell or dispose of the pole attachment,  
198 except to the extent the attaching entity's noncompliance is  
199 excused by an event of force majeure or other good cause as  
200 determined by the commission. An attaching entity shall submit  
201 payment to the pole owner within 60 days after receipt of the  
202 pole owner's invoice. A pole owner may seek to enforce its right  
203 to payment under this paragraph in circuit court and is entitled  
204 to prejudgment interest at the prevailing statutory rate and  
205 reasonable attorney fees and court costs. Upon receipt by the  
206 pole owner of written notice that complies with the commission  
207 rule, the noncompliant attaching entity shall indemnify, defend,  
208 and hold harmless the pole owner and its directors, officers,  
209 agents, and employees from and against all liability, except to  
210 the extent of any finding of negligence or willful misconduct,  
211 including attorney fees and litigation costs, arising in  
212 connection with the removal, transfer, sale, or disposal of the  
213 pole attachments from a redundant pole by the pole owner.





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214       (d) The commission may require by rule that an attaching  
215 entity post security instruments in favor of pole owners in  
216 amounts reasonably sufficient to cover the cost of the removal,  
217 transfer, sale, or disposal of pole attachments. The rules do  
218 not apply to existing agreements between the pole owners and the  
219 attaching entity if the agreement expressly provides for, or  
220 disclaims, security requirements.

221       (3) Upon petition by a pole owner, the commission may issue  
222 orders requiring the removal or transfer of pole attachments by  
223 noncompliant attaching entities.

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

226       (a) Prevent a party at any time from entering into a  
227 voluntary agreement authorizing a pole owner to remove an  
228 attaching entity's pole attachment. It is the intent of the  
229 Legislature to encourage parties to enter into such voluntary  
230 agreements without commission approval.

231       (b) Impair the contract rights of a party to a valid pole  
232 attachment agreement in existence before the effective date of  
233 this act.

234       (5) The commission shall adopt rules by April 1, 2022, to  
235 implement this section, including rules providing for the timely  
236 and coordinated removal of all pole attachments from redundant  
237 poles and establishing monetary penalties to be imposed against  
238 any entity in violation of this section.

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

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



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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to utility and communications poles;  
amending s. 120.80, F.S.; exempting certain rules  
adopted by the Public Service Commission from  
legislative ratification requirements; amending s.  
366.02, F.S.; defining terms; amending s. 366.04,  
F.S.; requiring the commission to regulate and enforce  
rates, charges, terms, and conditions for pole  
attachments under certain circumstances; providing  
requirements for such rules; providing construction;  
providing situations under which a pole owner may deny  
access to the owner's pole on a nondiscriminatory  
basis; requiring the commission to hear and resolve  
complaints concerning rates, charges, terms,  
conditions, voluntary agreements, and denial of access  
relative to pole attachments; requiring the commission  
to establish cost-based rates and charges for pole  
attachments and apply certain decisions and orders of  
the Federal Communications Commission; requiring the  
commission to authorize certain parties to participate  
as an intervenor in a specified number of  
administrative proceedings; requiring the commission  
to adopt rules by a specified date and provide  
certification to the Federal Communications Commission



272 upon such adoption; requiring the commission to  
273 regulate the safety, vegetation management, repair,  
274 replacement, maintenance, relocation, emergency  
275 response, and storm restoration requirements for poles  
276 of communications services providers; providing an  
277 exception; requiring the commission to adopt rules,  
278 including monetary penalties, by a specified date;  
279 authorizing the commission to access the books and  
280 records of communications services providers for  
281 specified purposes; providing that such information  
282 that contains proprietary confidential business  
283 information retains its confidential or exempt status  
284 when held by the commission; creating s. 366.97, F.S.;  
285 requiring the commission by rule to create a process  
286 requiring advance hardening project notice; requiring  
287 attaching entities to remove pole attachments from  
288 redundant poles within a specified timeframe after  
289 receipt of electronic or written notice from the pole  
290 owner; requiring the commission to provide the form  
291 and requirements for such notice by rule; authorizing  
292 a pole owner or its agent to transfer or relocate pole  
293 attachments of an attaching entity at the entity's  
294 expense under certain circumstances; providing an  
295 exception; requiring attaching entities to submit  
296 payment within a specified timeframe; authorizing pole  
297 owners to seek enforcement of such payment; requiring  
298 that the pole owner and its directors, officers,  
299 agents, and employees be held harmless under certain  
300 circumstances for such actions; authorizing a pole



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301 owner to remove and sell or dispose of certain  
302 abandoned pole attachments; authorizing the commission  
303 to require attaching entities to post certain security  
304 instruments by rule; authorizing the commission to  
305 issue orders for the removal or transfer of pole  
306 attachments by noncompliant attaching entities upon  
307 petition by a pole owner; providing construction;  
308 requiring the commission to adopt rules by a specified  
309 date; providing a directive to the Division of Law  
310 Revision; providing an effective date.