

By Senator Albritton

26-01453-21

20211944\_\_

1                   A bill to be entitled  
2           An act relating to utility and communications poles;  
3           amending s. 366.02, F.S.; defining terms; amending s.  
4           366.04, F.S.; requiring the Public Service Commission  
5           to regulate and enforce rates, charges, terms, and  
6           conditions for pole attachments under certain  
7           circumstances; providing requirements for such rules;  
8           providing construction; providing situations under  
9           which a pole owner may deny access to the owner's pole  
10          on a nondiscriminatory basis; authorizing the  
11          commission to hear and resolve complaints concerning  
12          rates, charges, terms, conditions, voluntary  
13          agreements, and denial of access relative to pole  
14          attachments; requiring the commission, at the request  
15          of a party, to assume jurisdiction over certain  
16          complaints before the Federal Communications  
17          Commission; requiring the commission to adopt rules by  
18          a specified date; requiring the commission to regulate  
19          the safety, vegetation management, repair,  
20          replacement, maintenance, relocation, emergency  
21          response, and storm restoration requirements for  
22          certain plants and equipment of communications  
23          services providers; requiring the commission to adopt  
24          rules, including monetary penalties, by a specified  
25          date; creating s. 366.97, F.S.; providing legislative  
26          findings; requiring attaching entities to remove pole  
27          attachments from redundant poles within a specified  
28          timeframe after receipt of a written notice from the  
29          pole owner; requiring the commission to provide the

26-01453-21

20211944\_\_

30 form and requirements for such notice; authorizing a  
31 pole owner or its agent to transfer or relocate pole  
32 attachments of an attaching entity at the entity's  
33 expense under certain circumstances; providing an  
34 exception; authorizing a pole owner to remove and sell  
35 or dispose of certain abandoned pole attachments;  
36 requiring that the pole owner and its directors,  
37 officers, agents, and employees be held harmless under  
38 certain circumstances for such actions; authorizing  
39 the commission to require attaching entities to post  
40 certain security instruments by rule; authorizing  
41 certain pole owners to transfer legal title of a  
42 redundant pole to an attaching entity that has not  
43 removed a pole attachment within a specified  
44 timeframe; providing for such transfer of title;  
45 providing for the transfer of obligation,  
46 responsibility, and liability of a pole to the new  
47 owner upon such a transfer of title; requiring the  
48 commission to impose monetary penalties for  
49 violations; requiring the commission to provide grants  
50 to install and upgrade broadband infrastructure in  
51 this state from any monetary penalty collected;  
52 providing construction; requiring the commission to  
53 adopt rules by a specified date; providing a directive  
54 to the Division of Law Revision; providing an  
55 effective date.

56  
57 Be It Enacted by the Legislature of the State of Florida:  
58

26-01453-21

20211944\_\_

59 Section 1. Subsection (4) through (9) are added to section  
60 366.02, Florida Statutes, to read:

61 366.02 Definitions.—As used in this chapter:

62 (4) "Attaching entity" means a person that is a local  
63 exchange carrier, a public utility or an electric utility, a  
64 communications services provider, or a cable television operator  
65 who owns or controls pole attachments.

66 (5) "Communications services" has the same meaning as in s.  
67 202.11.

68 (6) "Pole" means a pole, duct, conduit, or right-of-way  
69 that is used for wire or wireless communications or electricity  
70 distribution and that is owned in whole or in part by a pole  
71 owner, or a streetlight fixture that is owned in whole or in  
72 part by a public utility.

73 (7) "Pole attachments" means local exchange carrier,  
74 electric, communications services, or cable television  
75 facilities attached to a pole by an entity other than the pole  
76 owner.

77 (8) "Pole owner" means a local exchange carrier, a public  
78 utility or an electric utility, a communications services  
79 provider, a cable television operator, or other public utility  
80 which owns a pole used in whole or in part, for electrical  
81 purposes or for any wire or wireless communications.

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

84 1. Within 50 feet of a new pole which is intended to  
85 replace the old pole from which some or all of the pole  
86 attachments have not been removed and transferred to the new  
87 pole;

26-01453-21

20211944\_\_

88 2. Left standing after the pole owner has relocated its  
89 facilities to underground but on which pole attachments of other  
90 attaching entities remain; or

91 3. Left standing after a pole owner's attachments have been  
92 removed from that route or location to accommodate a new route  
93 or design for the delivery service.

94 Section 2. Subsections (8) and (9) are added to section  
95 366.04, Florida Statutes, to read:

96 366.04 Jurisdiction of commission.—

97 (8) (a) The commission shall regulate and enforce rates,  
98 charges, terms, and conditions for pole attachments in  
99 situations in which a pole owner is unable to reach an agreement  
100 with a party seeking pole attachments, including the types of  
101 attachments regulated under 47 U.S.C. s. 224(a)(4), attachments  
102 to streetlight fixtures, or attachments to poles owned by a  
103 communications services provider, to ensure that such rates,  
104 charges, terms, and conditions are just and reasonable. The  
105 commission's authority under this subsection includes, but is  
106 not limited to, the state regulatory authority referenced in 47  
107 U.S.C. s. 224(c).

108 (b) In developing the rules, the commission shall consider  
109 the interests of the subscribers and users of the services  
110 offered through such pole attachments, as well as the interests  
111 of the consumers of any pole owner providing such attachments.

112 (c) It is the intent of the Legislature to encourage  
113 parties to enter into voluntary pole attachment agreements, and  
114 this subsection may not be construed to prevent parties from  
115 voluntarily entering into pole attachment agreements without  
116 commission approval.

26-01453-21

20211944\_\_

117       (d) A party's right to nondiscriminatory access to a pole  
118 under this subsection is identical to the rights afforded under  
119 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its  
120 poles on a nondiscriminatory basis when there is insufficient  
121 capacity, for reasons of safety and reliability, and when  
122 required by generally applicable engineering purposes. A pole  
123 owner's evaluation of capacity, safety, reliability, and  
124 engineering requirements must consider relevant construction and  
125 reliability standards approved by the commission and may include  
126 an evaluation of the financial and performance-related  
127 capabilities of the entity requesting attachment.

128       (e) The commission may hear and resolve complaints  
129 concerning rates, charges, terms, conditions, voluntary  
130 agreements, or any denial of access relative to pole attachments  
131 with regard to the types of attachments regulated under 47  
132 U.S.C. s. 224, attachments to streetlight fixtures, or  
133 attachments owned by a communications services provider. Federal  
134 Communications Commission precedent is not binding upon the  
135 commission in the exercise of its authority under this  
136 subsection.

137       (f) Upon commencement of its authority under this  
138 subsection, the commission, upon the request of a party to a  
139 complaint proceeding pending before the Federal Communications  
140 Commission, shall assume jurisdiction over the matter if it is  
141 not yet subject to a final order of the Federal Communications  
142 Commission at the time of the request.

143       (g) The commission shall adopt rules by October 1, 2021, to  
144 administer and implement this subsection, including one or more  
145 appropriate formulae for apportioning costs.

26-01453-21

20211944\_\_

146       (9) (a) The commission shall regulate the safety, vegetation  
147 management, repair, replacement, maintenance, relocation,  
148 emergency response, and storm restoration requirements for  
149 poles, conduits, ducts, pipes, pole attachments, wires, cables,  
150 and related plant and equipment of communication services  
151 providers. The commission shall require communications services  
152 providers to establish storm reserve funds for the repair and  
153 replacement of facilities after natural disasters.

154       (b) The commission shall adopt rules by October 1, 2021, to  
155 administer and implement this subsection, including, but not  
156 limited to:

157           1. Mandatory pole inspections, including repair or  
158 replacement; vegetation management requirements for poles owned  
159 by providers of communications services; the establishment of  
160 storm reserve funds; and the sequential and timely removal of  
161 pole attachments; and

162           2. Monetary penalties to be imposed upon any communication  
163 services provider that fails to comply with any such rule of the  
164 commission.

165       Section 3. Section 366.97, Florida Statutes, is created to  
166 read:

167       366.97 Redundant poles; transfer of ownership; penalties.-

168       (1) The Legislature finds that:

169           (a) It is in the public interest for public utilities,  
170 communications services providers, and cable television  
171 operators that own poles to harden their infrastructure to  
172 strengthen the ability of their above-ground infrastructure to  
173 withstand extreme weather conditions, by and among other things,  
174 replacing older poles with newer, stronger poles; however, this

26-01453-21

20211944\_\_

175 work combined with the undergrounding of electrical facilities  
176 may result in redundant poles within public rights-of-way and  
177 easements for significant durations because owners of third-  
178 party pole attachments may not keep pace in removing their  
179 facilities from the old poles.

180 (b) Pole owners that set new poles are prevented from  
181 removing redundant poles when the pole attachments of other  
182 entities remain on the old poles. Such pole owners continue to  
183 incur liability as owners of poles they no longer use or want,  
184 but which continue to be used by other entities.

185 (c) Redundant poles in the public rights-of-way and  
186 easements are aesthetically unappealing and potentially create  
187 overcrowding of, and unsafe conditions in, the public rights-of-  
188 way and easements.

189 (d) It is in the public interest to timely and sequentially  
190 remove pole attachments from redundant poles and to transfer the  
191 ownership of poles from pole owners that are no longer using the  
192 poles to entities that continue to attach facilities to the  
193 poles.

194 (2) (a) An attaching entity must remove its pole attachments  
195 from a redundant pole within 90 calendar days after receipt of  
196 written notice from the pole owner requesting such removal. The  
197 commission shall provide the form and requirements for such  
198 notice.

199 (b) If an attaching entity fails to remove a pole  
200 attachment pursuant to paragraph (a), except to the extent  
201 excused by an event of force majeure or other good cause as  
202 determined by the commission, the pole owner or its agent may  
203 transfer or relocate the pole attachment to the new pole at the

26-01453-21

20211944

204 non-compliant attaching entity's expense. This subsection does  
205 not apply to an electric utility's pole attachments.

206 (c) If a pole attachment is abandoned or no longer in use  
207 by a noncompliant attaching entity, the pole owner or its agent  
208 may remove the pole attachment at the noncompliant attaching  
209 entity's expense and may sell or dispose of the pole attachment.  
210 The noncompliant attaching entity shall indemnify, defend, and  
211 hold harmless the pole owner and its directors, officers,  
212 agents, and employees from and against all liability, except to  
213 the extent of any finding of gross negligence or willful  
214 misconduct, including attorney fees and litigation costs,  
215 arising in connection with the removal, transfer, sale, or  
216 disposal of the pole attachments from a redundant pole by the  
217 pole owner.

218 (d) The commission may require by rule that an attaching  
219 entity post security instruments in favor of pole owners in  
220 amounts reasonably sufficient to cover the cost of the removal,  
221 transfer, sale, or disposal of pole attachments.

222 (3) (a) When a pole owner removes and relocates its overhead  
223 facilities or converts its overhead facilities to underground,  
224 in lieu of removal, transfer, sale, or disposal of the pole  
225 attachments as provided in subsection (2), the pole owner may  
226 transfer legal title of the redundant pole to an attaching  
227 entity that has not removed a pole attachment within 90 days  
228 after receipt of a notice to remove.

229 (b) Transfer of title shall occur by operation of law upon  
230 the date a written notice of title transfer is sent by the pole  
231 owner. The notice of title transfer must include pole  
232 identification numbers, if applicable, and must describe with



26-01453-21

20211944\_\_

233 specificity the locations of the pole or poles to be transferred  
234 and their corresponding remaining book value.

235 (c) Within 60 days after transferring title, the attaching  
236 entity shall remit payment to the transferor pole owner an  
237 amount equal to the total of the remaining book value for all  
238 poles listed in the notice of title transfer.

239 (d) A transferor pole owner may seek to enforce its rights  
240 under this subsection, including its right to payment, in the  
241 circuit court in whose jurisdiction the transferred poles are  
242 located. The transferor pole owner is entitled to prejudgment  
243 interest at the prevailing statutory rate, and the prevailing  
244 party in any such action is entitled to recover its reasonable  
245 attorney fees and court costs.

246 (e) Upon transfer of title, all obligation, responsibility,  
247 and liability incumbent upon a pole owner in this state  
248 including, but not limited to, safety, vegetation management,  
249 repair, replacement, maintenance, relocation, removal, emergency  
250 response, storm restoration, taxes, and third-party liability,  
251 shall immediately become the legal obligation, responsibility,  
252 and liability of the new pole owner. The transferor pole owner  
253 is relieved of all such obligation, responsibility, and  
254 liability immediately upon transfer of title.

255 (4) The commission shall impose monetary penalties upon any  
256 entity subject to its jurisdiction which is found to be in  
257 violation of this section. Upon petition by a pole owner, the  
258 commission may issue orders requiring the removal or transfer of  
259 pole attachments by noncompliant attaching entities and shall  
260 impose monetary penalties in accordance with this section.

261 (5) All monetary penalties assessed by the commission

26-01453-21

20211944\_\_

262 pursuant to this section must be used by the commission to  
263 provide grants for the installing and upgrading of broadband  
264 infrastructure in unserved and underserved rural and low-income  
265 areas of this state. The commission shall establish criteria for  
266 the award of grants from the fund to businesses and  
267 organizations that have demonstrated the ability to construct  
268 and install infrastructure and that have submitted an  
269 application and proposal detailing how the grant funds would  
270 further the objectives of this subsection to expand broadband  
271 services in unserved and underserved areas.

272 (6) This section may not be construed to do any of the  
273 following:

274 (a) Prevent a party at any time from entering into a  
275 voluntary agreement authorizing a pole owner to remove an  
276 attaching entity's pole attachment. It is the intent of the  
277 Legislature to encourage parties to enter into such voluntary  
278 agreements without commission approval.

279 (b) Impair the contract rights of a party to a valid pole  
280 attachment agreement in existence before the effective date of  
281 this act.

282 (7) The commission shall adopt rules by October 1, 2021, to  
283 implement this section, including rules providing for the  
284 sequential removal of all pole attachments from redundant poles  
285 and establishing monetary penalties to be imposed against any  
286 entity in violation of this section.

287 Section 4. The Division of Law Revision is directed to  
288 replace the phrase "the effective date of this act" wherever it  
289 occurs in this act with the date this act becomes a law.

290 Section 5. This act shall take effect upon becoming a law.