

By the Committee on Appropriations; and Senator Albritton

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1                                   A bill to be entitled  
2       An act relating to utility and communications poles;  
3       amending s. 120.80, F.S.; exempting certain rules  
4       adopted by the Public Service Commission from  
5       legislative ratification requirements; amending s.  
6       366.02, F.S.; defining terms; amending s. 366.04,  
7       F.S.; requiring the commission to regulate and enforce  
8       rates, charges, terms, and conditions for pole  
9       attachments under certain circumstances; providing  
10      requirements for such rules; providing construction;  
11      providing situations under which a pole owner may deny  
12      access to the owner's pole on a nondiscriminatory  
13      basis; requiring the commission to hear and resolve  
14      complaints concerning rates, charges, terms,  
15      conditions, voluntary agreements, and denial of access  
16      relative to pole attachments; requiring the commission  
17      to establish cost-based rates and charges for pole  
18      attachments and apply certain decisions and orders of  
19      the Federal Communications Commission; requiring the  
20      commission to authorize certain parties to participate  
21      as an intervenor in a specified number of  
22      administrative proceedings; requiring the commission  
23      to adopt rules by a specified date and provide  
24      certification to the Federal Communications Commission  
25      upon such adoption; requiring the commission to  
26      regulate the safety, vegetation management, repair,  
27      replacement, maintenance, relocation, emergency  
28      response, and storm restoration requirements for poles  
29      of communications services providers; providing an

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30 exception; requiring the commission to adopt rules,  
31 including monetary penalties, by a specified date;  
32 authorizing the commission to access the books and  
33 records of communications services providers for  
34 specified purposes; providing that such information  
35 that contains proprietary confidential business  
36 information retains its confidential or exempt status  
37 when held by the commission; creating s. 366.97, F.S.;  
38 requiring the commission by rule to create a process  
39 requiring advance hardening project notice; requiring  
40 attaching entities to remove pole attachments from  
41 redundant poles within a specified timeframe after  
42 receipt of electronic or written notice from the pole  
43 owner; requiring the commission to provide the form  
44 and requirements for such notice by rule; authorizing  
45 a pole owner or its agent to transfer or relocate pole  
46 attachments of an attaching entity at the entity's  
47 expense under certain circumstances; providing an  
48 exception; requiring attaching entities to submit  
49 payment within a specified timeframe; authorizing pole  
50 owners to seek enforcement of such payment; requiring  
51 that the pole owner and its directors, officers,  
52 agents, and employees be held harmless under certain  
53 circumstances for such actions; authorizing a pole  
54 owner to remove and sell or dispose of certain  
55 abandoned pole attachments; authorizing the commission  
56 to require attaching entities to post certain security  
57 instruments by rule; authorizing the commission to  
58 issue orders for the removal or transfer of pole

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59        attachments by noncompliant attaching entities upon  
60        petition by a pole owner; providing construction;  
61        requiring the commission to adopt rules by a specified  
62        date; providing a directive to the Division of Law  
63        Revision; providing an effective date.

64

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

66

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

69        120.80 Exceptions and special requirements; agencies.—

70        (13) FLORIDA PUBLIC SERVICE COMMISSION.—

71        (g) Rules adopted by the Florida Public Service Commission  
72        to implement ss. 366.04(8) and (9) and 366.97 are not subject to  
73        s. 120.541.

74        Section 2. Subsections (4) through (9) are added to section  
75        366.02, Florida Statutes, to read:

76        366.02 Definitions.—As used in this chapter:

77        (4) "Attaching entity" means a person that is a local  
78        exchange carrier, a public utility, a communications services  
79        provider, a broadband service provider, or a cable television  
80        operator that owns or controls pole attachments.

81        (5) "Communications services" has the same meaning as in s.  
82        202.11(1).

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

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88 facilities.

89 (7) "Pole attachment" means any attachment by a public  
90 utility, local exchange carrier communications services  
91 provider, broadband provider, or cable television operator to a  
92 pole, duct, conduit, or right-of-way owned or controlled by a  
93 pole owner.

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

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

99 (a) Within 50 feet of a new pole that is intended to  
100 replace the old pole from which some or all of the pole  
101 attachments have not been removed and transferred to the new  
102 pole;

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

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

109 Section 3. Subsections (8) and (9) are added to section  
110 366.04, Florida Statutes, to read:

111 366.04 Jurisdiction of commission.—

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

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

122 (b) In developing such rules, the commission shall consider  
123 the interests of the subscribers and users of the services  
124 offered through such pole attachments, as well as the interests  
125 of the consumers of any pole owner providing such attachments.

126 (c) It is the intent of the Legislature to encourage  
127 parties to enter into voluntary pole attachment agreements, and  
128 this subsection may not be construed to prevent parties from  
129 voluntarily entering into pole attachment agreements without  
130 commission approval.

131 (d) A party's right to nondiscriminatory access to a pole  
132 under this subsection is identical to the rights afforded under  
133 47 U.S.C. s. 224(f) (1). A pole owner may deny access to its  
134 poles on a nondiscriminatory basis when there is insufficient  
135 capacity, for reasons of safety and reliability, and when  
136 required by generally applicable engineering purposes. A pole  
137 owner's evaluation of capacity, safety, reliability, and  
138 engineering requirements must consider relevant construction and  
139 reliability standards approved by the commission.

140 (e) The commission shall hear and resolve complaints  
141 concerning rates, charges, terms, conditions, voluntary  
142 agreements, or any denial of access relative to pole attachments  
143 with regard to the types of attachments regulated under 47  
144 U.S.C. s. 224, attachments to streetlight fixtures, or  
145 attachments owned by a communications services provider. Federal

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146 Communications Commission precedent is not binding upon the  
147 commission in the exercise of its authority under this  
148 subsection. When taking action upon such complaints, the  
149 commission shall establish just and reasonable cost-based rates,  
150 terms, and conditions for pole attachments and shall apply the  
151 decisions and orders of the Federal Communications Commission  
152 and any appellate court decisions reviewing an order of the  
153 Federal Communications Commission regarding pole attachment  
154 rates, terms, or conditions in determining just and reasonable  
155 pole attachment rates, terms, and conditions unless a pole owner  
156 or attaching entity establishes by competent substantial  
157 evidence pursuant to proceedings conducted pursuant to ss.  
158 120.569 and 120.57 that an alternative cost of service-based  
159 pole attachment rate is appropriate and in the public interest.

160 (f) In the administration and implementation of this  
161 subsection, the commission shall authorize any petitioning pole  
162 owner or attaching entity to participate as an intervenor with  
163 full party rights under chapter 120 in the first five formal  
164 administrative proceedings conducted to determine pole  
165 attachment rates under this section. These initial five  
166 proceedings are intended to provide commission precedent on the  
167 establishment of pole attachment rates by the commission and  
168 help guide negotiations toward voluntary pole attachment  
169 agreements. After the fifth such formal administrative  
170 proceeding is concluded by final order, parties to subsequent  
171 pole attachment rate proceedings are limited to the specific  
172 pole owner and pole attaching entities involved in and directly  
173 affected by the specific pole attachment rate.

174 (g) The commission shall adopt procedural rules by January

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175 1, 2022, to administer and implement this subsection and, upon  
176 adoption of such rules, shall provide its certification to the  
177 Federal Communications Commission pursuant to 47 U.S.C. s.  
178 224(c) (2).

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

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

187 1. Mandatory pole inspections, including repair or  
188 replacement; vegetation management requirements for poles owned  
189 by providers of communications services; and

190 2. Monetary penalties to be imposed upon any communications  
191 services provider that fails to comply with any such rule of the  
192 commission. Monetary penalties imposed by the commission must be  
193 consistent with s. 366.095.

194 (c) The commission may access the books and records of  
195 communications services providers to the limited extent  
196 necessary to perform its functions and to exercise its authority  
197 under subsection (8), this subsection, and s. 366.97(4). Upon  
198 request by a communications services provider, any records that  
199 are shown and found to be proprietary confidential business  
200 information that is confidential or exempt from disclosure under  
201 s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution  
202 which are received by the commission under this paragraph shall  
203 retain their confidential or exempt status when held by the

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204 commission.

205 Section 4. Section 366.97, Florida Statutes, is created to  
206 read:

207 366.97 Redundant poles; transfer of ownership.-

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

214 (a) The scope of the major hardening project, to the extent  
215 determined, the locations of the affected poles, the expected  
216 start date, and the expected completion date of the major  
217 hardening project; and

218 (b) The date, time, and location of a field meeting for the  
219 pole owner and attaching entities to review and discuss the  
220 planned major hardening project details, including the types of  
221 replacement poles to be used. The field meeting must occur no  
222 sooner than 15 calendar days after the date of the notice and no  
223 later than 60 calendar days after the notice and, at a minimum,  
224 must include sufficient information to enable the attaching  
225 entity to locate the affected poles and identify the owner of  
226 any facilities attached to the poles.

227 (2) (a) An attaching entity must remove its pole attachments  
228 from a redundant pole within 180 calendar days after receipt of  
229 an electronic or a written notice from the pole owner requesting  
230 such removal. The commission shall determine by rule the  
231 sufficiency of, and requirements for, such removal notice and  
232 may consider the use of a joint use notification software



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233 program to accomplish such removal notice.

234 (b) If an attaching entity fails to remove a pole  
235 attachment pursuant to paragraph (a), except to the extent  
236 excused by an event of force majeure or other good cause as  
237 determined by the commission, the pole owner or its agent may  
238 transfer or relocate the pole attachment to the new pole at the  
239 noncompliant attaching entity's expense. This subsection does  
240 not apply to an electric utility's pole attachments. An  
241 attaching entity shall submit payment to the pole owner within  
242 60 days after receipt of the pole owner's invoice. A pole owner  
243 may seek to enforce its right to payment under this paragraph in  
244 circuit court and is entitled to prejudgment interest at the  
245 prevailing statutory rate and reasonable attorney fees and court  
246 costs. Upon receipt by the pole owner of written notice that  
247 complies with the commission rule, the noncompliant attaching  
248 entity shall indemnify, defend, and hold harmless the pole owner  
249 and its directors, officers, agents, and employees from and  
250 against all liability, except to the extent of any finding of  
251 negligence or willful misconduct, including attorney fees and  
252 litigation costs, arising in connection with the transfer of the  
253 pole attachment from a redundant pole to a new pole by the pole  
254 owner.

255 (c) If a pole attachment is no longer in use by a  
256 noncompliant attaching entity, the pole owner or its agent may  
257 remove the pole attachment at the noncompliant attaching  
258 entity's expense and may sell or dispose of the pole attachment,  
259 except to the extent the attaching entity's noncompliance is  
260 excused by an event of force majeure or other good cause as  
261 determined by the commission. An attaching entity shall submit

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262 payment to the pole owner within 60 days after receipt of the  
263 pole owner's invoice. A pole owner may seek to enforce its right  
264 to payment under this paragraph in circuit court and is entitled  
265 to prejudgment interest at the prevailing statutory rate and  
266 reasonable attorney fees and court costs. Upon receipt by the  
267 pole owner of written notice that complies with the commission  
268 rule, the noncompliant attaching entity shall indemnify, defend,  
269 and hold harmless the pole owner and its directors, officers,  
270 agents, and employees from and against all liability, except to  
271 the extent of any finding of negligence or willful misconduct,  
272 including attorney fees and litigation costs, arising in  
273 connection with the removal, transfer, sale, or disposal of the  
274 pole attachments from a redundant pole by the pole owner.

275 (d) The commission may require by rule that an attaching  
276 entity post security instruments in favor of pole owners in  
277 amounts reasonably sufficient to cover the cost of the removal,  
278 transfer, sale, or disposal of pole attachments. The rules do  
279 not apply to existing agreements between the pole owners and the  
280 attaching entity if the agreement expressly provides for, or  
281 disclaims, security requirements.

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

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

287 (a) Prevent a party at any time from entering into a  
288 voluntary agreement authorizing a pole owner to remove an  
289 attaching entity's pole attachment. It is the intent of the  
290 Legislature to encourage parties to enter into such voluntary

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291 agreements without commission approval.

292 (b) Impair the contract rights of a party to a valid pole  
293 attachment agreement in existence before the effective date of  
294 this act.

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

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

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