

20211944e1

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, charges, terms, and
18 conditions for pole attachments and apply certain
19 decisions and orders of the Federal Communications
20 Commission; requiring the commission to authorize
21 certain parties to participate as an intervenor in a
22 specified number of administrative proceedings;
23 requiring the commission to adopt rules by a specified
24 date and provide certification to the Federal
25 Communications Commission upon such adoption;
26 requiring the commission to regulate the safety,
27 vegetation management, repair, replacement,
28 maintenance, relocation, emergency response, and storm
29 restoration requirements for poles of communications

20211944e1

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

20211944e1

59 directive to the Division of Law Revision; providing
60 an effective date.

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

63
64 Section 1. Paragraph (g) is added to subsection (13) of
65 section 120.80, Florida Statutes, to read:

66 120.80 Exceptions and special requirements; agencies.—

67 (13) FLORIDA PUBLIC SERVICE COMMISSION.—

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

71 Section 2. Subsections (4) through (9) are added to section
72 366.02, Florida Statutes, to read:

73 366.02 Definitions.—As used in this chapter:

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

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

80 (6) "Pole" means a pole used for electric distribution
81 service, streetlights, communications services, local exchange
82 services, or cable television services which is owned in whole
83 or in part by a pole owner. The term does not include a pole
84 used solely to support wireless communications service
85 facilities or a pole with no electrical facilities attached.

86 (7) "Pole attachment" means any attachment by a public
87 utility, local exchange carrier communications services

20211944e1

88 provider, broadband provider, or cable television operator to a
89 pole, duct, conduit, or right-of-way owned or controlled by a
90 pole owner.

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

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

96 (a) Near or adjacent to a new pole that is intended to
97 replace the old pole from which some or all of the pole
98 attachments have not been removed and transferred to the new
99 pole;

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

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

106 Section 3. Subsections (8) and (9) are added to section
107 366.04, Florida Statutes, to read:

108 366.04 Jurisdiction of commission.—

109 (8) (a) The commission shall regulate and enforce rates,
110 charges, terms, and conditions of pole attachments, including
111 the types of attachments regulated under 47 U.S.C. s. 224(a)(4),
112 attachments to streetlight fixtures, attachments to poles owned
113 by a public utility, or attachments to poles owned by a
114 communications services provider, to ensure that such rates,
115 charges, terms, and conditions are just and reasonable. The
116 commission's authority under this subsection includes, but is

20211944e1

117 not limited to, the state regulatory authority referenced in 47
118 U.S.C. s. 224(c).

119 (b) In the development of rules pursuant to paragraph (g),
120 the commission shall consider the interests of the subscribers
121 and users of the services offered through such pole attachments,
122 as well as the interests of the consumers of any pole owner
123 providing such attachments.

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

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

138 (e) The commission shall hear and resolve complaints
139 concerning rates, charges, terms, conditions, voluntary
140 agreements, or any denial of access relative to pole
141 attachments. Federal Communications Commission precedent is not
142 binding upon the commission in the exercise of its authority
143 under this subsection. When taking action upon such complaints,
144 the commission shall establish just and reasonable cost-based
145 rates, terms, and conditions for pole attachments and shall

20211944e1

146 apply the decisions and orders of the Federal Communications
147 Commission and any appellate court decisions reviewing an order
148 of the Federal Communications Commission regarding pole
149 attachment rates, terms, or conditions in determining just and
150 reasonable pole attachment rates, terms, and conditions unless a
151 pole owner or attaching entity establishes by competent
152 substantial evidence pursuant to proceedings conducted pursuant
153 to ss. 120.569 and 120.57 that an alternative cost-based pole
154 attachment rate is just and reasonable and in the public
155 interest.

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

170 (g) The commission shall propose procedural rules to
171 administer and implement this subsection. The rules must be
172 proposed for adoption no later than January 1, 2022, and, upon
173 adoption of such rules, shall provide its certification to the
174 Federal Communications Commission pursuant to 47 U.S.C. s.

20211944e1

175 224(c)(2).

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

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

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

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

192 (c) The commission may access the books and records of
193 communications services providers to the limited extent
194 necessary to perform its functions and to exercise its authority
195 under subsection (8), this subsection, and s. 366.97(4). Upon
196 request by a communications services provider, any records that
197 are received by the commission under this paragraph which are
198 proprietary confidential business information under s. 364.183
199 or s. 366.093 shall retain their status as confidential or
200 exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I
201 of the State Constitution.

202 Section 4. Section 366.97, Florida Statutes, is created to
203 read:

20211944e1

204 366.97 Redundant poles; transfer of ownership.-

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

210 (a) The scope of the major hardening project, to the extent
211 determined, the locations of the affected poles, the expected
212 start date, and the expected completion date of the major
213 hardening project; and

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

223 (2) (a) An attaching entity must remove its pole attachments
224 from a redundant pole within 180 calendar days after receipt of
225 an electronic or a written notice from the pole owner requesting
226 such removal. A pole owner may use a joint use notification
227 software program to accomplish such written or electronic
228 removal notice.

229 (b) If an attaching entity fails to remove a pole
230 attachment pursuant to paragraph (a), except to the extent
231 excused by an event of force majeure or other good cause as
232 agreed to by the parties or as determined by the commission or

20211944e1

233 its designee within 30 calendar days after the 180 calendar-day
234 period under paragraph (a), the pole owner or its agent may
235 transfer or relocate the pole attachment to the new pole at the
236 noncompliant attaching entity's expense. This subsection does
237 not apply to an electric utility's pole attachments. An
238 attaching entity shall submit payment to the pole owner within
239 60 days after receipt of the pole owner's invoice for transfer
240 or relocation of the pole attachments. A pole owner may seek to
241 enforce its right to payment under this paragraph in circuit
242 court and, if it prevails, is entitled to prejudgment interest
243 at the prevailing statutory rate and reasonable attorney fees
244 and court costs. Upon receipt by the pole owner of written
245 notice, the attaching entity that fails to comply with this
246 subsection shall indemnify, defend, and hold harmless the pole
247 owner and its directors, officers, agents, and employees from
248 and against all liability, except to the extent of any finding
249 of negligence or willful misconduct, including attorney fees and
250 litigation costs, arising in connection with the transfer of the
251 pole attachment from a redundant pole to a new pole by the pole
252 owner.

253 (c) If a pole attachment is abandoned by an attaching
254 entity that fails to remove or transfer its attachments in
255 accordance with this section, the pole owner or its agent may
256 remove the pole attachment at the noncompliant attaching
257 entity's expense and may sell or dispose of the pole attachment,
258 except to the extent the attaching entity's noncompliance is
259 excused by an event of force majeure or other good cause as
260 determined by the commission. An attaching entity shall submit
261 payment to the pole owner within 60 days after receipt of the

20211944e1

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

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

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

279 (a) Prevent a party at any time from entering into a
280 voluntary agreement authorizing a pole owner to remove an
281 attaching entity's pole attachment. It is the intent of the
282 Legislature to encourage parties to enter into such voluntary
283 agreements without commission approval.

284 (b) Impair the contract rights of a party to a valid pole
285 attachment agreement in existence before the effective date of
286 this act.

287 Section 5. 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 6. This act shall take effect upon becoming a law.