

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 626

INTRODUCER: Regulated Industries Committee and Senator DiCeglie

SUBJECT: Broadband Internet Service Providers

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Schrader</u>	<u>Twogood</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 amends s. 425.04, F.S., regarding the powers of rural electric cooperatives, to specify that such cooperatives have the power to engage in the provision of broadband service. The bill also creates a new s. 364.391, F.S., which requires that if a cooperative engages in the provision of broadband service:

- All poles owned by that cooperative are subject to pole attachment regulation by the Public Service Commission (PSC) under 366.04(8), F.S., as if the cooperative was a public utility; and
- The PSC may access the books and records of the cooperative for the limited purpose of exercising its pole regulatory authority. Such records would be subject to the same confidentiality protection procedures as other records utilized in PSC proceedings.

The bill also provides that the rural electric cooperative pole attachment regulatory authority established pursuant to the bill may not be construed to impair the contract rights of a party to a valid rural electric cooperative pole attachment agreement in existence before July 1, 2023.

The bill has an effective date of July 1, 2023.

II. Present Situation:

History of Rural Electric Cooperatives

Rural electric cooperatives are electric utilities that are owned by their consumer members. These private companies are generally nonprofit, with their principal purpose being to deliver electrical service to their members. Rural electric cooperatives are mostly located in rural areas where, at least historically, the return on investment for building or installing electrical infrastructure was not enough for investor-owned utilities to want to service them.¹

Historically, rural homes, farms, and businesses were some of the last places to electrify in the United States (U.S.). By the mid-1930's, 90 percent of U.S. urban homes were electrified,² however, the opposite was true in rural areas—only one out of 10 rural homes had electric service.³ This lack of electrical service deeply limited economic development in rural areas of the country. Despite this impact, the costs to electrify most rural areas were usually prohibitive and often thought not economically feasible.⁴ In the limited areas where rural electric power was available, often the prices paid by such consumers were far higher than those paid by their urban counterparts.

In 1935, Executive Order 7037, issued by President Franklin Roosevelt, created the Rural Electrification Administration (REA). One year later, Congress passed the Rural Electrification Act (Pub. L. 74–605), codifying the REA and creating a loan program to encourage the growth of rural electrification. Even with these available federal loans, established investor-owned utilities did not have much interest in building rural systems. However, there was significant interest from farmer-based electric cooperatives.⁵ By 1939, with assistance from REA funds, 413 rural electric cooperatives had been established in the U.S.,⁶ and by 1950, 80 percent of U.S. farms had electric service.⁷

During a reorganization of the United States Department of Agriculture (USDA) in 1994, the REA was replaced with the Rural Utilities Service, which still exists today.⁸ According to the National Rural Electric Cooperative Association (NRECA), now over 99 percent of U.S. farms have electrical service.⁹ Rural electric cooperatives continue to be the most prevalent way for consumers in rural areas to obtain electrical service.¹⁰

¹ University of Wisconsin Center for Cooperatives, *Research on the Economic Impact of Cooperatives*, available at <https://reic.uwcc.wisc.edu/electric/> (last visited Mar. 24, 2023).

² *Id.*

³ National Rural Electric Cooperative Association, *History*, available at <https://www.electric.coop/our-organization/history> (last visited Mar. 24, 2023).

⁴ United States Department of Agriculture, *Celebrating the 80th Anniversary of the Rural Electrification Administration*, Feb. 21, 2017, available at <https://www.usda.gov/media/blog/2016/05/20/celebrating-80th-anniversary-rural-electrification-administration> (last visited March 24, 2023).

⁵ National Rural Electric Cooperative Association, *History*, *supra* note 3.

⁶ University of Wisconsin Center for Cooperatives, *supra* note 1.

⁷ *Celebrating the 80th Anniversary of the Rural Electrification Administration*, *supra* note 4.

⁸ University of Wisconsin Center for Cooperatives, *supra* note 1.

⁹ National Rural Electric Cooperative Association, *History*, *supra* note 3.

¹⁰ United States Energy Information Administration, *Today in Energy: August 15, 2019*, available at <https://www.eia.gov/todayinenergy/detail.php?id=40913> (last visited March 24, 2023).

Issues with Electrifying Rural Areas

The issues with electrifying rural areas of the U.S. have generally stemmed from lack of population density and unique consumer demographics. One issue initially was the voltage of distribution systems. The low voltage distribution systems used in urban areas would experience significant and unacceptable voltage drop between the necessary distance runs needed in rural areas. This problem was overcome by using a higher voltage distribution network.¹¹ The second issue, which is still present today, is the very different customer base rural electric cooperatives service versus the rest of the electricity industry.

As of 2019, rural electric cooperatives averaged 7.98 customers per mile of line, as compared with 32.4 customers per mile of line for the rest of the electricity industry. In addition, while rural electric cooperatives have ownership of 42 percent of U.S. electricity distribution lines, their electricity sales only represent 12 percent of the nation's overall sales. Rural electric cooperatives have a different customer mix as well. For rural electric cooperatives, 53 percent of their customers are residential, with the remainder being commercial, industrial, and transportation customers—which generally have much higher energy consumption. For the U.S. electric industry at-large, the percentage of residential customers is 38 percent.¹²

These factors lead to rural electric cooperatives receiving significantly less revenue per dollar of capital investment in distribution. Rural electric cooperatives' average revenue per mile of distribution line is \$19,135 (versus \$79,298 for the rest of the electricity industry) and their cost of distribution plant per customer is \$4,219 (versus \$3,698).¹³ Thus, on a per customer basis, the distribution of electric power in rural areas is higher versus the rest of the industry.

Rural Electric Cooperatives in Florida

In 1937, the REA drafted the Electric Cooperative Corporation Act as a model state law for states to adopt for the forming and operating of rural electric cooperatives. Florida's first distribution electric cooperatives were formed that same year.¹⁴ At that time, much of Florida's geographic territory lacked electrical service due to, like most of the U.S., the lack of enough economic development to make providing service worthwhile for existing electric companies.

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives. These cooperatives are represented by the Florida Electric Cooperative Association (FECA).¹⁵ These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million

¹¹ University of Wisconsin Center for Cooperatives, *supra* note 1.

¹² National Rural Electric Cooperative Association, *Fact Sheet: February 2021*, available at <https://www.cooperative.com/programs-services/bts/documents/data/electric-co-op-fact-sheet-update-february-2021.pdf> (last visited Mar. 24, 2023).

¹³ *Id.*

¹⁴ Seminole Electric Cooperative, *Empowering our Community*, available at <https://www.seminole-electric.com/> (last visited Mar. 24, 2023).

¹⁵ Florida Electric Cooperative Association, *Members*, available at <https://feca.com/members/> (last visited Mar 24, 2023).

customers.¹⁶ Much like other areas of the U.S., Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.¹⁷

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.¹⁸ The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.¹⁹ In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.²⁰

The PSC monitors the safety and reliability of the electric power grid²¹ and may order the addition or repair of infrastructure as necessary.²² The PSC has broad jurisdiction over the rates and service of investor-owned electric utilities.²³ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.²⁴ Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

Under ch. 364, F.S., telecommunications carriers in Florida are also subject to only limited PSC regulation. During the 2011 legislative session, the "Regulatory Reform Act" (Act) was passed and signed into law by the Governor, effective July 1, 2011.²⁵ Under the Act, the Legislature eliminated most of the PSC's jurisdiction over telecommunications. However, the PSC still:

- Maintains the authority to ensure that incumbent local exchange carriers meet their obligation to provide unbundled access, interconnection, and resale to competitive local exchange companies in a nondiscriminatory manner;
- Administers the system to provide Telecommunications Relay Services; and

¹⁶ Florida Electric Cooperative Association, *Our History*, available at <https://feca.com/our-history/> (last visited Mar 24, 2023).

¹⁷ *Id.*

¹⁸ Section 350.001, F.S.

¹⁹ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, available at <http://www.psc.state.fl.us> (last visited Mar 24, 2023).

²⁰ Florida Public Service Commission, *About the PSC*, available at <https://www.psc.state.fl.us/about> (last visited Mar 24, 2023).

²¹ Section 366.04(5) and (6), F.S.

²² Section 366.05(1) and (8), F.S.

²³ Section 366.05, F.S.

²⁴ Florida Public Service Commission, *About the PSC*, supra note 20.

²⁵ Ch. 2011-36, Laws of Florida.

- Oversees the Federal Lifeline Assistance program for Florida.²⁶

Regulatory Assessment Fees

The PSC collects Regulatory Assessment Fees (RAFs) from all of the utilities under its jurisdiction. RAFs, license fees, other fees, and any other charges collected by the PSC are credited to the Florida Public Service Regulatory Trust Fund (Trust Fund).²⁷ Florida law generally directs the PSC to manage its trust fund in such a manner that each industry funds its own regulation.²⁸ While the PSC's budget is set annually by the Legislature, as approved by the Governor, Florida general revenue funds are not used to support the PSC's regulatory activities.

Rates for RAFs are set by PSC rule, subject to maximum rates established by statute. RAFs are charged as a percentage of gross operating revenues derived from intrastate business, subject to certain exclusions. Chart 1 below provides the current RAFs for Florida utilities, by industry.

²⁶ Florida Public Service Commission, *About the PSC*, supra note 20.

²⁷ Section 350.113, F.S.

²⁸ Specifically:

- Section 364.336(2) and (3), F.S., requires the PSC to reduce the RAFs for telecommunications industry after the Regulatory Reform Act of 2011 to reflect the PSC's reduced regulatory oversight of that industry;
- Section 367.145(3), F.S., requires that RAFs collected pursuant to the water and wastewater RAF collection authorization may only be used to cover the cost of regulating water and wastewater systems. Also, fees collected under the electricity utility industry, gas utility industry, and telecommunications industry RAF collection authorizations may not be used to pay for the cost of water and wastewater regulation.
- Section 368.109, F.S., states that the RAFs set by the PSC for the natural gas transmission (i.e. natural gas pipeline) industry must, to the extent practicable, be related to the cost of regulating that industry.

Chart 1: Regulatory Assessment Fees by Florida Utility Industry

Utility Type	Current RAF	Statutory Maximum
Investor-owned Gas Utilities	0.5% ²⁹	0.5% ³⁰
Municipal Gas Utilities	0.1919% ³¹	0.25% ³²
Natural Gas Transmission	0.25% ³³	0.25% ³⁴
Telecommunications Companies	0.16% ³⁵	0.25% ³⁶
Water and Wastewater Utilities	4.5% ³⁷	4.5% ³⁸
Investor-owned Electric Utilities	0.072% ³⁹	0.125% ⁴⁰
Municipal Electric Utilities and Rural Electric Cooperatives	0.015625% ⁴¹	0.015625% ⁴²

By a significant margin, municipal electric utilities and rural electric cooperatives have the lowest RAF rates of all Florida utilities (the next closest is investor-owned electric utilities, with RAF rates over 4.5 times that of municipal electric utilities and rural electric cooperatives). These rates reflect the comparatively lower regulatory costs the PSC incurs in regulating these types of utilities due, in large part, to the PSC having limited jurisdiction over them.

Certificates of Authority

Section 364.33, F.S., specifies that a person may not provide telecommunications services to the public without either a certificate of authority or a certificate of necessity. As part of the Regulatory Reform Act, the PSC was directed to stop issuing certificates of authority after July 1, 2011; however, existing certificates remain valid. Certificates of authority may be transferred to said holder’s parent company, an affiliate, or another person holding a certificate of necessity or authority (or such entity’s parent company or an affiliate) without prior approval of the PSC by giving written notice of the transfer to the PSC within 60 days after the completion of the transfer. Under s. 364.33, F.S., companies offering traditional wireline telephone service must obtain a certificate of authority from the PSC before providing service to the public. However, for companies offering other communications

²⁹ Fla. Admin. Code R. 25-7.0131, (2013).
³⁰ Section 366.14, F.S.
³¹ Fla. Admin. Code R. 25-7.0131, (2013).
³² Section 366.14, F.S.
³³ Fla. Admin. Code R. 25-7.101, (2013).
³⁴ Section 368.109, F.S.
³⁵ Fla. Admin. Code R. 25-4.0161, (2011).
³⁶ Section 364.336, F.S.
³⁷ Fla. Admin. Code R. 25-30.120, (2013).
³⁸ Section 367.145, F.S.
³⁹ Fla. Admin. Code R. 25-6.0131, (2013).
⁴⁰ Section 366.14, F.S.
⁴¹ Fla. Admin. Code R. 25-6.0131, (2013).
⁴² Section 366.14, F.S.

services such as broadband, cable, or wireless services, a certificate is optional if that company does not offer such traditional wireline service. This is because such services are exempt from PSC jurisdiction under s. 364.011, F.S.

Section 364.335, F.S., provides the application requirements for a certificate of authority. An applicant must provide all of the following:

- Their official name and, if different, any name under which the applicant will do business;
- The street address of their principal place of business;
- Their federal employer identification number or the Department of State's document number;
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person to whom questions or concerns may be addressed; and
- Information demonstrating their managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The PSC must grant the certificate upon the applicant demonstrating they have the sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Regulation of Pole Attachments

Utility poles were first deployed in the U.S. in 1844 to extend telegraph service. While they are an over 175 year old technology, utility poles continue to provide the scaffolding for the technology of the twenty-first century. In the mid-nineteenth and early twentieth centuries, many states adopted laws granting rights-of-way (ROW) to construct utility poles, wires, and facilities to transmit electricity and communications signals. First telegraph, then telephone, electricity, cable, wireless, and Internet service providers have sought to attach facilities to wooden, and later steel or composite, utility poles.⁴³

The term “pole attachment” refers to the process by which communications companies colocate communications infrastructure on existing electric utility poles. Colocation reduces the number of poles that must be built to accommodate utility services, thereby reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.⁴⁴ The space requested for a pole attachment is typically one foot.⁴⁵

⁴³ Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 *Cath. U. L. Rev.* 473, 474–75 (2020), available at <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3552&context=lawreview> (last visited March 24, 2023).

⁴⁴ American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021), available at <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations> (last visited March 24, 2023).

⁴⁵ Evari GIS Consulting, *Joint Use Pole Audit*, available at <https://www.evarigisconsulting.com/joint-use-pole-audit> (last visited March 24, 2023).

Pole attachments were originally established by mutual agreement. Later, such agreements were regulated by federal statute and administrative rules. Pole attachments provide non-pole-owning cable and telecommunication service providers (such as cable television providers and local exchange carriers) with access to a pole-owning utility's distribution poles, conduits, and right-of-way for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.⁴⁶

In 1978, Congress passed the “Pole Attachment Act,” which added s. 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish rates, terms, and conditions for pole attachments for the cable television industry.⁴⁷

The “Telecommunications Act of 1996,” which, amended 47 U.S.C. s. 244 to add provisions making access to utility poles mandatory for telecommunications services providers and providing for nondiscriminatory access—unless there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.⁴⁸ Municipal owned electric utilities and rural electric cooperatives are exempt from the provisions of 47 U.S.C. s. 224.⁴⁹ Specifically, the term “utility” is defined as:

[A]ny person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.⁵⁰

A state, however, can assume regulation of pole attachment through a process known as “reverse preemption.” This requires a state to expressly assert jurisdiction through state legislation, followed by certifying to the FCC that “in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.”⁵¹ As of June 13, 2022, 23 states and the District of Columbia have reverse preemption, including Florida.⁵²

⁴⁶ *Id.*

⁴⁷ Pub. L. No. 95-234, *codified* at 47 U.S.C. s. 224.

⁴⁸ Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

⁴⁹ 47 U.S.C. s. 224(a)(1).

⁵⁰ *Id.*

⁵¹ 47 U.S.C. s. 224(c)(2).

⁵² Federal Communications Commission, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, June 13, 2022, *available at* <https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-3> (last visited March 24, 2023).

Florida assumed regulation of pole attachments from the FCC after the passage and enactment of SB 1944 in 2021.⁵³ Presently, pole attachments are regulated under sections 366.04(8) and (9), F.S. and 366.97, F.S.

Section 366.04(8), F.S., grants authority to the PSC to regulate and enforce rates, charges, terms, and conditions for pole attachments, including attachments to streetlight fixtures, owned by a public utility or a communications services provider. The subsection specifies that the PSC's authority includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c), relating to pole attachments. The types of pole attachments regulated under this provision are defined in 47 U.S.C. s. 224(a)(4) and "means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." Rural electric cooperatives are not included in the definition of "utility" for this federal code section. In addition, rural electric cooperatives and municipal electric utilities are not considered public utilities for the purposes of ch. 366, F.S.

In addition, s. 366.04(8), F.S., provides:

- Jurisdiction for the PSC to regulate and enforce rates, charges, terms, and conditions of pole attachments and ensure that such rates, charges, terms, and conditions are just and reasonable.⁵⁴ In adopting rules to regulate and enforce these provisions, the PSC must consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.
- Legislative intent that parties are encouraged to enter into voluntary pole attachment agreements without PSC approval and that parties not be prevented from voluntarily entering into such contracts without PSC approval.
- Circumstances under which a pole owner, on a non-discriminatory basis, may deny access to its poles, including insufficient capacity, safety, reliability, and engineering requirements. The subsection also provides that a pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider the PSC's approved construction and reliability standards.
- That the PSC hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. FCC precedent is not binding upon the PSC in the exercise of this delegated authority. The PSC must establish just and reasonable cost-based rates when exercising its jurisdiction to hear such cases and to apply the decisions and orders of the FCC and any appellate court decisions reviewing FCC orders regarding pole attachment rates, terms or conditions in determining just and reasonable pole attachment rates, terms or conditions.
- That a pole owner or attaching entity may provide evidence, subject to proceedings conducted pursuant to s. 120.569, F.S., and s. 120.57, F.S., to establish that an alternative cost of service-based pole attachment rate is appropriate and in the public interest.

⁵³ Chapter 2021-191, L.O.F.

⁵⁴ The types of pole attachments under PSC regulation include the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, attachments to poles owned by a public utility, or attachments to poles owned by a communications services provider.

- The PSC must authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under ch. 120, F.S., in the first four formal administrative proceedings to determine pole attachment rates, so as to provide PSC precedent to establish pole attachment rates and help guide negotiations toward voluntary pole attachment agreements.
- That, after the fourth such proceeding, parties subject to a pole attachment rate proceeding are limited to the specific pole owner and pole attaching entity involved in and directly affected by the specific pole attachment rate after the fifth formal administrative proceeding is concluded by final order.
- That the PSC must engage initial rulemaking regarding s. 366.04(8), F.S., and must have those rules proposed for adoption no later than January 1, 2022.

As of June 8, 2022, the PSC has adopted rules to implement s. 366.04(8), F.S., which are codified under Florida Administrative Code Rule 25-18.010.

Section 366.04(9), F.S., requires that the PSC regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers; however, this provision does not apply to a communications services provider that does not own poles. Section 366.04(9), F.S., also directed the PSC to engage initial rulemaking regarding this provision and to have those rules proposed for adoption no later than April 1, 2022. At minimum, PSC rules regarding s. 366.04(9), F.S.:

- Address mandatory pole inspections, including repair or replacement;
- Establish vegetation management requirements for poles owned by providers of communications services; and
- Establish monetary penalties to be imposed upon any communications services provider that fails to comply with pole attachment rules of PSC established pursuant to s. 366.04(8), F.S. Such penalties must be consistent with s. 366.095, F.S., which limits fines to \$5,000 per offense.

As of April 12, 2022, the PSC has adopted rules to implement s. 366.04(9), F.S., which are codified under Florida Administrative Code Rule 25-18.020.

Section 366.97, F.S., provides procedures relating to redundant poles and the transfer of pole ownership. These procedures require:

- Pole owners to provide advance notice to attaching entities of major hardening projects to replace poles within 180 calendar days of receiving written notice to do so. Such hardening notices must include:
 - The scope of the major hardening project (to the extent it has been determined), the location of affected poles, the expected start date, and the expected completion date; and
 - The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the planned major hardening project details, including the types of replacement poles to be used. The field meeting must occur no sooner than 15 calendar days after the date of the notice and no later than 60 calendar days

after the notice and, at a minimum, must include sufficient information to enable the attaching entity to locate the affected poles and identify the owner of any facilities attached to the poles.

- An attaching entity to remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or written notice from a pole owner requesting such removal. A pole owner may use a joint use notification software program to accomplish such written or electronic removal notice.
- If an attaching entity fails to remove such a pole attachment (except in the event of force majeure or other good cause as agreed to by the parties or as determined by the PSC or its designee within 30 calendar days after the 180 calendar-day period), the pole owner or its agent may transfer or relocate an attachment to a new pole at the attachment owner's expense. This provision does not apply to an electric utility's pole attachments. Payment for such transfer or removal is due to the pole owner in 60 days after receipt of invoice. A pole owner may seek to enforce its right to payment in circuit court and, if it prevails, is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court costs. Upon receipt by the pole owner of written notice, the attaching entity that fails to comply with such removal shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.
- If a pole attachment is abandoned by an attaching entity that fails to remove or transfer its attachments as required under s. 366.97, F.S., the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment. This does not apply where the attaching entity's noncompliance is excused by an event of force majeure or other good cause as determined by the PSC. Non-compliant attaching utilities who have abandoned their attachments as specified in this provision, are subject to the same 60-day payment and indemnification requirements as those who failed to remove an attachment from a redundant pole above.
- A pole owner may petition the PSC to enforce this section, except to the extent that petitioning to the circuit court is specified.

Section 366.97, F.S., also specifies that the legislature encourages entities to enter voluntary agreements authorizing a pole owner to remove an attaching entity's attachment and that the section should not be construed as preventing such agreements. Also, the section specifies that it should not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before June 29, 2021.

Broadband Availability in Rural Areas

Much like with rural electricity distribution, the primary challenge in deploying broadband in rural areas is one of population density. The U.S. Department of Transportation estimates that the average cost of laying fiber is \$27,000 per mile.⁵⁵ Many rural areas are remote and

⁵⁵ Congressional Research Service, *Raising the Minimum Fixed Broadband Speed Benchmark: Background and Selected Issues*, July 12, 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF11875/2> (last visited March 24, 2023).

have geographically dispersed populations, thus more fiber per customer must be laid to serve them. Moreover, rural areas often have more harsh terrain than urban areas—such as mountain ranges or ground that is frozen for substantial portions of the year. These features can make it more difficult and costly to serve such areas with fiber.⁵⁶ Cable networks can also face similar density and terrain issues.

While rural customers still lag behind urban counterparts, the difference in broadband access between these areas is at its lowest ever. In 2015, reflecting advances in technology, the FCC raised benchmark speeds to be considered broadband service to 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads (25/3 Mbps service).⁵⁷ Under this benchmark, the FCC reported that 53 percent of people living in U.S. rural areas lacked access to broadband—as compared to just 8 percent of persons living in U.S. urban areas lacking such access. By 2021, the gap for 25/3 Mbps service with at least one provider had essentially vanished.⁵⁸ Rural areas still were behind their urban counterparts in choice however; 91 percent of rural customers had access to three or more providers, versus 99 percent of urban customers.⁵⁹

In 2021, the FCC considered increasing their standard for broadband to 100 Mbps of download and 10 Mbps of upload speed (100/10 Mbps service), but ultimately rejected the change given concerns about whether enough providers could meet such a standard.

Broadband Growth Programs

Florida Broadband Opportunity Program

Established under s. 288.9962, F.S., the Broadband Opportunity Program (BOP) is a competitive reimbursement program within the Florida Department of Economic Opportunity (DEO).⁶⁰ The purpose of the program is to award grants to applicants who seek to expand broadband Internet service to unserved areas of Florida. To operate the program, Florida Legislature appropriated \$400 million in federally funded State and Local Fiscal Recovery Funds (SLFRF) to increase Floridians' access to reliable, affordable, and high-speed internet service.⁶¹

Connect America Fund

One of the earliest and most significant federal broadband programs is the Connect America Fund, which is part of the FCC's Universal Service Fund (USF). Started in 2011, the purpose of the fund is to provide subsidies to telecommunications companies to expand

⁵⁶ *Id.*

⁵⁷ Federal Communications Commission, *Wireline: 2015 Broadband Progress Report*, Feb. 14, 2015, available at <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report> (last visited March 24, 2023).

⁵⁸ USA Facts, *How Many Americans have Broadband Internet Access*, Sep. 27, 2022, available at <https://usafacts.org/articles/how-many-americans-have-broadband-internet-access/#footnote-3> (last visited March 24, 2023).

⁵⁹ *Id.*

⁶⁰ Florida Department of Economic Opportunity, *Broadband Opportunity Program*, available at <https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program> (last visited Mar. 24, 2023).

⁶¹ *Id.*

telecommunications infrastructure in rural and remote areas of the United States.⁶² The Connect America Fund is a “high-cost” program, meaning that it is designed to ensure that consumers in rural, insular, and high cost areas have access to modern telecommunications networks and that services through those networks, like voice and broadband, are available at a cost comparable to that in more developed urban areas.⁶³ The Connect America Fund is the largest of the USF’s programs, and has an annual budget of \$4.5 billion.⁶⁴

Broadband Technology Opportunities Program

The Broadband Technology Opportunities Program (BTOP) is a federal grant program administered by the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce. The BTOP is funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and has an annual budget of \$4 billion. The purpose of the program is to “bridge the technological divide” and BTOP projects include deploying broadband Internet infrastructure, enhancing and expanding public computer centers, and encouraging the sustainable adoption of broadband service.⁶⁵

USDA Programs: ReConnect Program and the Rural Broadband Program

The USDA operates two programs aimed at developing broadband in rural areas—the ReConnect Program and the Rural Broadband Program. Though these programs both existed prior to 2021, the Infrastructure Investment and Jobs Act (Public Law 117-58), signed into law on November 15, 2021, provided new funding for both of these programs (and other broadband initiatives). The ReConnect Program received \$1.926 billion in funds for grants and loans and the Rural Broadband Program received \$74 million in funds for loans. This new funding level, starting in 2022, exceeded the fiscal year 2021 levels by \$1.291 billion (an increase of 203 percent) for the ReConnect Program and by \$72 million (an increase of 97 percent) for the Rural Broadband Program.⁶⁶

The purpose of the ReConnect Program is to offer loans, grants, and loan-grant combinations to facilitate broadband deployment in rural areas that currently do not have sufficient access to broadband. The entities eligible to apply for the Reconnect Program include:

- Corporations, limited liability companies, and limited liability partnerships;
- State and local governments;
- U.S. territories and possessions; and

⁶² Federal Communications Commission, *Universal Service Monitoring Report*, Feb. 13, 2023, available at <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports> (last visited March 24, 2023).

⁶³ Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund*, available at <https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund#releases> (last visited Mar. 24, 2023).

⁶⁴ Universal Service Administrative Co., *Program Overview*, available at <https://www.usac.org/high-cost/program-overview/> (last visited Mar 24, 2023).

⁶⁵ National Telecommunications and Information Administration, *Broadband Technology Opportunities Program*, available at <https://ntia.gov/category/broadband-technology-opportunities-program#:~:text=The%20Broadband%20Technology%20Opportunities%20Program,in%20communities%20across%20the%20country> (last visited Mar. 24, 2023).

⁶⁶ Congressional Research Service, *Infrastructure Investment and Jobs Act: Funding for USDA Rural Broadband Programs*, Nov. 19. 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF11918> (last visited March 24, 2023).

- Indian tribes, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b).⁶⁷

The purposes for which Reconnect grants may be used are:

- Construction or improvement of facilities required to provide fixed terrestrial broadband services;
- Funding of reasonable pre-application expenses; and
- Funding the acquisition of an existing telecommunications system that does not currently provide sufficient access to broadband.⁶⁸

The Rural Broadband Program offers funds to help construct, improve, or acquire facilities and equipment needed to provide broadband to rural areas. The entities eligible to apply for the program are:

- Corporations;
- Limited liability companies;
- Cooperative or mutual organizations;
- State and local governments; and
- Indian tribes and tribal organizations.

For the most recent years prior to 2021, Congress only appropriated funds to the Rural Broadband Program for loans. However, with the increase in funding under the Infrastructure Investment and Jobs Act, funding for grants and loan guarantees is also now available in the program.⁶⁹

While the USDA's Reconnect and Rural programs are similar in their purpose, a key distinction lies in the standards for eligible service areas. For the ReConnect Program, eligible service areas are areas where at least 90% of households lack sufficient access to broadband with at least 100 Mbps download and 20 Mbps upload speed (100/20 Mbps service). For the Rural Broadband Program, the standard for eligibility is if the area in question does not have at least 50% of households with at least 25 Mbps download and 3 Mbps upload speed (25/3 Mbps service).

Growth of Rural Electric Cooperative Engagement in Broadband

According to the NRECA, about 200 rural electric cooperatives are currently providing or building out broadband service. In addition, the NRECA states that 200 additional rural electric cooperatives are “assessing the feasibility of providing service to more than 6 million households in co-op service areas that don't have access to high-speed internet service.”⁷⁰ To support its members wishing to be, or currently engaged in, the broadband business, the

⁶⁷ United States Department of Agriculture, *ReConnect Program*, available at <https://www.usda.gov/reconnect/program-overview> (last visited Mar 24, 2023).

⁶⁸ *Id.*

⁶⁹ Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund*, supra note 66.

⁷⁰ National Rural Electric Cooperatives Association, *Broadband*, available at <https://www.electric.coop/issues-and-policy/broadband> (last visited Mar 24, 2023).

NRECA launched a new level of service for its members in July 2022 called NRECA Broadband.⁷¹ The stated purpose of NRECA Broadband is to offer:

- Federal policy and regulatory advocacy;
- Communication, events, and education; and
- Operations and technology support.⁷²

While rural electric cooperatives have experience in operating a monopoly electric utility, many have little institutional experience in operating in a non-monopoly competitive market in general or in broadband telecommunications specifically. Thus, these companies can face challenges in learning how to market and provide broadband services.⁷³

Rural Electric Cooperative Involvement in Broadband in Florida

Section 425.04, F.S., establishes the powers of rural electric cooperatives in Florida. It states, that, in addition to providing energy, water, and wastewater utility services, rural electric cooperatives may, in order to promote economic development, “provide...nonenergy services to its membership.” Utilizing this provision, currently, five of Florida’s 18 rural electric cooperatives, are engaged in or developing broadband service:

- Glades Electric Cooperative (5.1 members per mile of line).
- Central Florida Electric Cooperative (6.34 members per mile of line).
- Suwannee Valley Electric Cooperative (4.5 members per mile of line).
- Tri-County Electric Cooperative (4.48 members per mile of line).
- Escambia River Electric Cooperative (6.94 members per mile of line).

According to the FECA these five cooperatives are the most rural in nature of the cooperatives in Florida.⁷⁴

III. Effect of Proposed Changes:

Section 1 creates s. 364.391, F.S., which provides that, if a rural electric cooperative engages in the provision of broadband service:

- All poles owned by that cooperative are subject to pole attachment regulation by the Public Service Commission (PSC) under s. 366.04(8), F.S., as if the cooperative was a public utility.
- The PSC may access the books and records of the cooperative for the limited purpose of exercising its pole regulatory authority. Such records would be subject to the same confidentiality protection procedures as other records utilized in PSC proceedings under ss. 364.183 and 366.093, F.S.

⁷¹ *Id.*

⁷² Cooperative.com, *NRECA Broadband*, available at <https://www.cooperative.com/topics/telecommunications-broadband/nreca-broadband/Pages/default.aspx> (last visited Mar. 24, 2023).

⁷³ National Rural Electric Cooperatives Association, *Along Those Lines: What It Takes for Electric Co-ops to Enter the Broadband Space*, Jan 24, 2023, available at <https://www.electric.coop/along-those-lines-what-it-takes-for-electric-co-ops-to-enter-the-broadband-space> (last visited March 24, 2023).

⁷⁴ Email from Drew Love, Director of Government Affairs, Florida Electric Cooperatives Association, to Senate Regulated Industries Staff (Mar. 6, 2023) (on file with Senate Regulated Industries Committee).

Proposed s. 364.391, F.S., defines “engages in the provision of broadband” as:

- Providing broadband directly, through an affiliate,⁷⁵ or pursuant to an agreement with a third party; or
- Receiving broadband grant funding:
 - Pursuant to the Florida Department of Economic Opportunity’s Broadband Opportunity Program (BOP); or
 - From any other federal or state program offering grants to expand broadband Internet service to unserved areas of this state.

The section also specifies that the rural electric cooperative pole attachment regulatory authority established pursuant to proposed s. 364.391, F.S., may not be construed to impair the contract rights of a party to a valid rural electric cooperative pole attachment agreement in existence before July 1, 2023.

Section 2 amends s. 425.04, F.S., which establishes the powers of a rural electric cooperative. Specifically, the bill provides that rural cooperatives may engage in the provision of broadband, pursuant to the pole attachment regulations specified in proposed s. 364.391, F.S., in the bill.

Section 3 of the bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁷⁵ “Affiliate” is defined in proposed s. 364.391, F.S., as an entity related through a parent cooperative’s controlling interest. The term includes a subsidiary or any other entity under common control with the cooperative.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Currently, rural electric cooperatives pay limited RAFs to the Florida PSC to fund only the limited regulatory authority the PSC has over these utilities. In addition, under s. 364.011(2), F.S., broadband services, regardless of the provider, platform, or protocol, are exempt from oversight by the PSC (except to the extent delineated in ch. 364, F.S.).

Traditionally, the cost associated with regulatory requirements established in Florida law has been assessed to the utilities and telecommunications companies subject to the PSC's authority. The bill does not provide the PSC with authority to increase RAFs for rural electric cooperatives, nor does it establish authority to assess RAFs to the communication services providers that may become subject to the PSC's authority under the bill.

B. Private Sector Impact:

The financial and legal responsibilities of parties to rural electric cooperative pole attachment arrangements in Florida may substantially change depending on the PSC's implementation of new pole attachment regulatory authority under this bill.

C. Government Sector Impact:

The bill may have a negative impact on state revenues and expenditures. However, the PSC has stated that, as currently drafted, the expected increased workload "can be absorbed."⁷⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 425.04 of the Florida Statutes.
This bill creates section 364.391 of the Florida Statutes.

⁷⁶ Florida Public Service Commission, *Bill Analysis for SB 626* (Mar. 3, 2023) (on file with the Senate Regulated Industries Committee).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 7, 2023:

The committee substitute:

- Adds a provision allowing the Public Service Commission (PSC) limited access to cooperative records to the extent necessary to administer rural electric cooperative pole attachment regulation established under the bill. A statement is also included to clarify that such records would be given the same protection as other utility records subject to PSC proceedings.
- Adds a provision stating that the bill is not intended to impair existing pole attachment agreements.
- Removes a reference in the bill to the definition of “communications services” in s. 350.81(1), F.S., in establishing powers of rural cooperatives under ch. 425, F.S. This is revised to state “broadband” instead, in order to clarify that a rural electric cooperative offering such services does not need to obtain a certificate of authorization from the PSC in order to do so.
- Clarifies that the PSC-regulated pole attachment provisions established under the bill only apply when a rural electric cooperative engages in broadband.
- Makes technical changes.

- B. **Amendments:**

None.