

1 A bill to be entitled

2 An act relating to utility and communication service
3 poles; amending s. 120.80, F.S.; exempting certain
4 rules adopted by the Florida Public Service Commission
5 from legislative ratification requirements; amending
6 s. 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 poles 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, terms, and
18 conditions for pole attachments and apply certain
19 decisions and orders of the Federal Communications
20 Commission; providing guidance for use by the
21 commission in making certain determinations;
22 authorizing pole owners and attaching entities to use
23 an alternative cost-of-service-based pole attachment
24 rate; specifying party rights regarding pole
25 attachment rates for purposes for certain ch. 120,

26 F.S., hearings; requiring the commission to adopt
27 procedural rules by a specified date and provide
28 certification to the Federal Communications Commission
29 upon such adoption; requiring the commission to
30 regulate the safety, vegetation management, repair,
31 replacement, maintenance, relocation, emergency
32 response, and storm restoration requirements for poles
33 of communications services providers; providing an
34 exception; requiring the commission to adopt rules,
35 including monetary penalties, by a specified date;
36 authorizing the commission to access the books and
37 records of communications services providers for
38 specified purposes; creating s. 366.97, F.S.;

39 requiring the commission by rule to develop a process
40 requiring advance major hardening project notice;
41 requiring attaching entities to remove pole
42 attachments from redundant poles within a specified
43 timeframe after receipt of electronic or written
44 notice from the pole owner; requiring the commission
45 to determine by rule the form and requirements for
46 such notice; authorizing a pole owner or its agent to
47 transfer, relocate, remove, sell, or dispose of
48 certain pole attachments at the noncompliant attaching
49 entity's expense under certain circumstances;
50 providing an exception; requiring that the pole owner

51 and its directors, officers, agents, and employees be
 52 held harmless under certain circumstances for such
 53 actions; authorizing the commission to require by rule
 54 attaching entities to post certain security
 55 instruments; authorizing the commission to issue
 56 orders requiring removal or transfer of pole
 57 attachments by noncompliant attaching entities;
 58 providing construction; requiring the commission to
 59 adopt rules, including monetary penalties, by a
 60 specified date; providing a directive to the Division
 61 of Law Revision; providing an effective date.

62

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

64

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

67 120.80 Exceptions and special requirements; agencies.—

68 (13) FLORIDA PUBLIC SERVICE COMMISSION.—

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

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

74 366.02 Definitions.—As used in this chapter:

75 (4) "Attaching entity" means a person that is a local

76 exchange carrier, a public utility, a communications services
77 provider, a broadband service provider, or a cable television
78 operator that owns or controls pole attachments.

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

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

86 (7) "Pole attachment" means any attachment by a public
87 utility, local exchange carrier, communications services
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) Within 50 feet of a new pole which 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 for 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
117 not limited to, the state regulatory authority referenced in 47
118 U.S.C. s. 224(c).

119 (b) In developing rules under paragraph (a), the
120 commission shall consider the interests of the subscribers and
121 users of the services offered through such pole attachments, as
122 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 and for reasons of safety, reliability, and generally
134 applicable engineering purposes. A pole owner's evaluation of
135 capacity, safety, reliability, and engineering requirements must
136 consider relevant construction and reliability standards
137 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 attachments
141 with regard to the types of attachments regulated under 47
142 U.S.C. s. 224, attachments to streetlight fixtures, or
143 attachments owned by a communications services provider. Federal
144 Communications Commission precedent is not binding upon the
145 commission in the exercise of its authority under this
146 subsection. When taking action upon such complaints, the
147 commission shall establish just and reasonable cost-based rates
148 and charges, terms, and conditions for pole attachments and
149 shall apply the decisions and orders of the Federal
150 Communications Commission and any appellate court decisions

151 reviewing an order of the Federal Communications Commission
152 regarding pole attachment rates and charges, terms, or
153 conditions in determining just and reasonable pole attachment
154 rates, terms, and conditions unless a pole owner or attaching
155 entity establishes by competent substantial evidence pursuant to
156 proceedings conducted under ss. 120.569 and 120.57 that an
157 alternative cost-of-service-based pole attachment rate is
158 appropriate and in the public interest.

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

172 (g) The commission shall adopt procedural rules by
173 January 1, 2022, to administer and implement this subsection,
174 and upon adoption of such rules, shall provide its certification

175 to the Federal Communications Commission pursuant to 47 U.S.C.
176 s. 224(c)(2).

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

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

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

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

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 this subsection, subsection (8), and s. 366.97(4).

198 Section 4. Section 366.97, Florida Statutes, is created to
199 read:

200 366.97 Redundant poles; transfer of ownership.-

201 (1) The commission by rule shall develop a process to

202 require pole owners to provide at least 180 calendar days'

203 electronic or written advance notice to affected attaching

204 entities of major hardening projects the purpose of which is to

205 replace poles to ensure the poles meet extreme wind loading

206 requirements. The advance major hardening project notice must

207 include:

208 (a) The scope of the major hardening project to the extent

209 it has been determined, the locations of the affected poles, and

210 the expected start and completion dates of the major hardening

211 project; and

212 (b) The date, time, and location of a field meeting for

213 the pole owner and attaching entities to review and discuss the

214 planned major hardening project details, including the types of

215 replacement poles to be used. The field meeting may not occur

216 sooner than 15 calendar days nor later than 60 calendar days

217 after the date that the advance notice is given, and shall at a

218 minimum include sufficient information to enable the attaching

219 entity to locate the affected poles and to identify the owner of

220 any facilities attached to the poles.

221 (2) (a) An attaching entity must remove its pole

222 attachments from a redundant pole within 180 calendar days after

223 receipt of electronic or written notice from the pole owner

224 requesting such removal. The commission shall determine by rule

225 the sufficiency of, and requirements for, such removal notice
226 and may consider the use of a joint-use notification software
227 program to accomplish such removal notice.

228 (b) If an attaching entity fails to remove a pole
229 attachment pursuant to paragraph (a), except to the extent
230 excused by an event of force majeure or other good cause as
231 determined by the commission, the pole owner or its agent may
232 transfer or relocate the pole attachment to the new pole at the
233 noncompliant attaching entity's expense. This subsection does
234 not apply to an electric utility's pole attachments. An
235 attaching entity shall submit payment to the pole owner within
236 60 days after receipt of the pole owner's invoice.

237 (c) If a pole attachment is no longer in use by a
238 noncompliant attaching entity, the pole owner or its agent may
239 remove the pole attachment at the noncompliant attaching
240 entity's expense and may sell or dispose of the pole attachment,
241 except to the extent the attaching entity's noncompliance is
242 excused by an event of force majeure or other good cause as
243 determined by the commission.

244 (d) Within 60 days after receipt of the pole owner's
245 invoice for payment under paragraph (b) or paragraph (c), an
246 attaching entity shall submit payment to the pole owner. A pole
247 owner may seek to enforce its right to payment under this
248 subsection in circuit court and shall be entitled to prejudgment
249 interest at the prevailing statutory rate and reasonable

250 attorney fees and court costs. Upon adequate written notice by
251 the pole owner, the noncompliant attaching entity shall
252 indemnify, defend, and hold harmless the pole owner and its
253 directors, officers, agents, and employees from and against all
254 liability, except to the extent of any finding of negligence or
255 willful misconduct, including attorney fees and litigation
256 costs, arising in connection with the removal, transfer,
257 relocation, sale, or disposal of the pole attachments from a
258 redundant pole by the pole owner.

259 (e) The commission may require by rule that an attaching
260 entity post security instruments in favor of pole owners in
261 amounts reasonably sufficient to cover the cost of the removal,
262 transfer, relocation, sale, or disposal of pole attachments. The
263 rule shall not apply if an existing agreement between the pole
264 owner and attaching entity expressly provides for, or disclaims,
265 security requirements.

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

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

271 (a) Prevent a party at any time from entering into a
272 voluntary agreement authorizing a pole owner to remove an
273 attaching entity's pole attachment. It is the intent of the

274 Legislature to encourage parties to enter into voluntary
275 agreements without commission approval.

276 (b) Impair the contract rights of a party to a valid pole
277 attachment agreement in existence before the effective date of
278 this act.

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

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

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