

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1944

INTRODUCER: Appropriations Committee and Senator Albritton

SUBJECT: Utility and Communications Poles

DATE: April 21, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

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**I. Summary:**

CS/SB 1944 creates a process for handling redundant utility poles and abandoned pole attachments and vests the Florida Public Service Commission (commission) with jurisdiction to administer the bill's provisions.

The bill revises section 120.80(13), Florida Statutes, to exempt the commission's adopted rules related to statements of estimated regulatory costs from the requirements of section 120.541, Florida Statutes.

The bill defines the terms "attaching entity," "communications services," "pole," "pole attachments," "pole owner," and "redundant pole."

Under the bill, the commission is authorized to adopt rules, regulate and enforce rates, terms, and conditions for pole attachments when parties are unable to reach an agreement; and to regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles and pole attachments. The bill requires the commission to establish cost-based rates, terms, and conditions for pole attachments using Federal Communications Commissions (FCC) decisions, orders and appellate decisions in FCC cases unless a pole owner or attaching entity establishes an alternative cost is appropriate and in the public interest. The commission must hear and resolve complaints concerning charges, terms, conditions, voluntary agreements, or denial of access to pole attachment under 47 United States Code, section 224,<sup>1</sup> The bill provides the FCC precedent is not binding upon the commission in such hearings.

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<sup>1</sup> United States Code, Title 47 – Telecommunications, s. 224: Pole Attachments, available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title47-section224&num=0&edition=prelim> (last visited Apr. 19, 2021).

The bill delineates circumstances in which a pole owner may deny access on a nondiscriminatory basis to its poles, including insufficient capacity, safety and reliability, and when required by generally applicable engineering purposes. Such evaluation must consider relevant construction and reliability standards approved by the commission and may include financial and performance-related capabilities of the entity requesting access.

The bill requires the commission to allow petitioning pole owners or attaching entities to participate as intervenors in the first five formal administrative proceedings.

The commission is required to adopt procedural rules by January 1, 2022, to administer and implement the provisions of the bill and to provide certification to the FCC.

The bill requires the commission to adopt rules by April 1, 2022, that consider the interests of the subscribers. The rules must include:

- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management requirements for poles owned by communications providers; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules; and

The bill provides the commission authority to access books and records of communications services providers under limited conditions; if such documents are confidential and exempt as proprietary confidential business information, they will retain that status.

The bill creates section 366.97, Florida Statutes, relating to redundant poles and transfer of ownership. The bill:

- Requires pole attachments to be removed from a redundant pole within 180 calendar days of receipt of written notice to do so;
- Requires the commission to create a process for pole owners to provide notification to attaching entities of major hardening projects and provides certain requirements for notice and review of the project;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense after failure to remove the attachment within the 90 days of receiving written notice;
- Requires an attaching entity to reimburse the pole owner within 60 days of receiving the pole owner's invoice.
- Allows the right for repayment to be enforced in circuit court, subject to prejudgment interest, attorneys' fees and costs.
- Requires the non-compliant attaching party to indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees against all liability, except for negligence or willful misconduct.
- Allows a pole owner to remove and sell or dispose of a noncompliant attaching entity's pole attachment at the noncompliant entity's expense unless excused by an event of force majeure or other good cause.
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal,

transfer, or disposal of the attachment, unless an existing agreement expressly provides for or disclaims security agreements.

- Authorizes the commission to issue orders, upon petition by the pole owner, to require the removal or transfer of pole attachments by noncompliant attaching entities.
- Provides parties may enter into pole attachments contracts without commission approval and that existing contract rights under valid pole agreements entered into before the bill's effective date are not impaired.
- Authorizes the commission to adopt rules by April 1, 2022, to implement provisions relating to the timely and coordinated removal of all pole attachments from redundant poles; and establishing monetary penalties to be imposed against any entity in violation of the rules.

The bill has a negative impact to state revenues and expenditures. The commission estimates it will take eight full-time equivalent positions and recurring costs of \$460,668 and nonrecurring costs of \$31,828 in order to implement this bill. Fiscal Year 2021-2022 legislative budget conference agreed to appropriate the commission's original estimated cost associated with implementing the bill, as originally filed, contingent on SB 1944, House Bill 1567, or similar legislation becoming law. (See V. Fiscal Impact.)

The bill is effective upon becoming a law.

## II. Present Situation:

### Regulation of Pole Attachment

First deployed in America in 1844 to extend telegraph service, utility poles 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.<sup>2</sup>

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility services, while 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.<sup>3</sup> The space requested for a pole attachment is typically one foot.

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<sup>2</sup> 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), <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3552&context=lawreview> (last visited Apr. 5, 2021).

<sup>3</sup> American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations> (last visited Apr. 5, 2021).

Pole attachments, originally by mutual agreement, but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers (e.g. cable TV, local exchange carriers) with access to a 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.<sup>4</sup>

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 industry.<sup>5</sup>

In 1996, the “Telecommunications Act” added provisions making access to utility poles mandatory for telecommunications services providers, providing for nondiscriminatory access, unless there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.<sup>6</sup> Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.<sup>7</sup> The term “utility” is defined as:

[A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.<sup>8</sup>

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.”<sup>9</sup> As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.<sup>10</sup> Florida does not presently regulate pole attachments.

### ***FCC Section 224 Pole Attachment Complaints***

There are currently five pending “Section 224 Pole Attachment Complaints” filed with the FCC.<sup>11</sup> Four of the pending complaints concern BellSouth Telecommunications LLC, d/b/a

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<sup>4</sup> Edison Electric Institute, *Pole Attachments 101*, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Apr. 5, 2021).

<sup>5</sup> Pub. L. No. 95-234, *codified* at 47 U.S.C. s. 224.

<sup>6</sup> Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

<sup>7</sup> 47 U.S.C. s. 224(a)(1).

<sup>8</sup> *Id.*

<sup>9</sup> 47 U.S.C. s. 224(c)(2).

<sup>10</sup> Federal Communications Commission, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, Mar. 19, 2020, <https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2> (last visited Apr. 6, 2021).

<sup>11</sup> See Federal Communications Commission, *EB - Market Disputes Resolution Division Pending Complaints*, <https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints> (last visited Apr. 6, 2021).

AT&T Florida (AT&T); of which two are against Florida Power and Light Company (FPL),<sup>12</sup> and two are against Duke Energy affiliated companies.

The complaint filed by AT&T against FPL on July 1, 2019, alleged the rate paid to attach AT&T's facilities to FPL was unjust and unreasonable under the FCC rules and orders issued pursuant to 47 U.S.C. s. 224.<sup>13</sup> The FCC granted the complaint in part, finding AT&T was entitled to a reduced rate for the period ending on December 31, 2018.<sup>14</sup> Under the order, the parties were unable to agree as to the proper calculation of the reduced rate and the FCC further decided AT&T was entitled to a refund of any overpayments for the period of July 1, 2014, to December 31, 2018.<sup>15</sup> The FCC established the pole attachments rate under its last order.<sup>16</sup>

### Third-Party Pole Attachment and Joint Use

A third-party pole attachment is a communications attachment by a "third-party attacher," such as a cable television system or provider of telecommunications service, to a pole, duct, conduit, or right-of-way owned or controlled by a utility.<sup>17</sup> On April 7, 2011, the FCC approved its pole attachment order.<sup>18</sup> Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC's jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.<sup>19</sup>

"Joint use" refers to sharing use of a utility pole by agreement between pole-owning utilities.<sup>20</sup> "Pole attachments" relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.<sup>21</sup> This provides non-pole owning utilities with access to a utility's distribution poles, conduits, and rights-of-way for installation of facilities and

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<sup>12</sup> See Federal Communications Commission, *Memorandum Opinion and Order, DA-21-57*, Jan. 14, 2021, <https://docs.fcc.gov/public/attachments/DA-21-57A1.pdf> (last visited Apr. 6, 2021). After release of the bureau order in BellSouth Telecommunications LLC, d/b/a AT&T Florida (AT&T) vs Florida Power and Light Company (FPL), the parties were unable resolve their differences and AT&T then filed a second complaint against FPL with the FCC asserting the provisions invoked by FPL in its Notice of Termination are unjust and unreasonable under section 224 and requested that they be amended.

<sup>13</sup> *Id.*, at 1 n.1.

<sup>14</sup> Federal Communications Commission, *Grants, in Part, AT&T Pole Attachment. Complaint Against FL P&L: Memorandum Opinion and Order, DA-20-529*, May 20, 2020, <https://www.fcc.gov/document/fcc-grants-part-att-pole-attach-complaint-against-fl-pl> (last visited Apr. 6, 2021).

<sup>15</sup> Federal Communications Commission, *EB Grants in Part and Stays in Part AT&T Florida's Complaint Memorandum Opinion and Order: DA-21-57*, January 14, 2021, <https://www.fcc.gov/document/eb-grants-part-and-stays-part-att-floridas-complaint> (last visited Apr. 6, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> 47 U.S.C. s. 224(a)(4).

<sup>18</sup> Federal Communications Commission, *FCC Reforms Pole Attachment Rules to Boost Broadband Deployment*, FCC 11-50, Apr. 7, 2011, <https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment> (last visited Apr. 6, 2021).

<sup>19</sup> See American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations*, <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations#:~:text=In%201978%2C%20Congress%20passed%20the%20Pole%20Attachment%20Act%2C,for%20pole%20attachments%20for%20the%20then-new%20cable%20industry> (last visited Apr. 6, 2021).

<sup>20</sup> See Edison Electric Institute, *Pole Attachments 101*, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Apr. 6, 2021). While joint use is usually governed by contracts, the terms and conditions for detachment from a pole are usually handled in the form of an amendment to the original contract.

<sup>21</sup> *Id.*

equipment in order to build an interconnected network with reduced cost to consumers.<sup>22</sup> Other benefits of joint use and pole attachments include the ability to share the high cost of infrastructure; minimizing the visual impact of two separate pole networks; and minimizing roadway hazards.

According to the Edison Electric Institute, the mandatory nature of providing non-pole-owning utilities with access to poles has resulted in a number of issues such as:

- “Overlashing,” where existing attachments are made without notification;
- Compromised safety and reliability requirements for the installation of cable or telecommunications facilities;
- Failure to support utility efforts to inspect for safety violations and capacity overloading;
- Failed cooperation among the pole owner and attaching entities as it pertains to repairs, the expedited transfer of attachments to newly erected hardened poles, and undergrounding; and
- Electric utilities primarily bearing the burden of costs, particularly as it relates to weathering and storm damage.<sup>23</sup>

### *National Joint Utilities Notification System*

The National Joint Utilities Notification System (NJUNS) is a consortium of utility companies formed for the purpose of improving communication among utilities as it relates to pole transfers and replacements.<sup>24</sup> After a tragic incident occurred during a pole transfer, it was decided certified letters and phone calls were no longer a suitable way to provide notice.<sup>25</sup> The NJUNS provides a dashboard system that allows members to generate tickets and track pole transfers.<sup>26</sup> Florida has been a member of the NJUNS since 1992.<sup>27</sup>

### **Florida Public Service Commission**

The Florida Public Service Commission (commission) is an arm of the legislative branch of government.<sup>28</sup> The role of the commission is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>29</sup> In order to do so, the commission exercises authority over public utilities in one or more of the following areas: rate or economic regulation; market competition oversight; and/or monitoring of safety, reliability, and service issues.<sup>30</sup>

The commission monitors the safety and reliability of the electric power grid<sup>31</sup> and may order the addition or repair of infrastructure as necessary.<sup>32</sup> The commission has broad jurisdiction over

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> National Joint Utilities Notification System, *About: Who We are*, <https://web.njuns.com/about/> (last visited Apr. 6, 2021).

<sup>25</sup> *Id.*

<sup>26</sup> See National Joint Utilities Notification System, *Best Practices*, <https://web.njuns.com/njuns-best-practices/> (last visited Apr. 6, 2021).

<sup>27</sup> National Joint Utilities Notification System, *Members*, <https://web.njuns.com/members/> (last visited Apr. 6, 2021).

<sup>28</sup> Section 350.001, F.S.

<sup>29</sup> See Florida Public Service Commission, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Apr. 6, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> Section 366.04(5) and (6), F.S.

<sup>32</sup> Section 366.05(1) and (8), F.S.

the rates and service of investor-owned utilities. Currently, the commission does not have the authority to regulate pole attachments, absent the Legislature expressly conferring this jurisdiction on the commission.<sup>33</sup> “Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the [L]egislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan.”<sup>34</sup>

Telecommunications carriers in Florida are subject to limited regulation under ch. 364, F.S. During the 2011 legislative session the “Regulatory Reform Act” (Act), was passed and signed into law by the Governor, effective July 1, 2011.<sup>35</sup> Under the Act, the Legislature eliminated most of the commission’s retail oversight authority over the telecommunications wireline companies, yet maintained the commission’s authority over wholesale intercarrier issues. The Act eliminated most of the retail regulation of local exchange telecommunications services by the commission, including the elimination of rate caps on all retail telecommunications services, elimination of telecommunications-related consumer protection and assistance duties of the commission, and elimination of the commission’s remaining oversight of telecommunications service quality.<sup>36</sup> As a result of the deregulation of telecommunications companies, the commission did not require local exchange telecommunications companies to continue performing pole inspections after July 1, 2011.<sup>37</sup>

Currently, the commission does not have jurisdiction over the rates, charges, terms, and conditions of pole attachments or detachments. Pole owners and attaching entities govern the price, terms, and conditions of pole attachment agreements. Disputes are adjudicated before the FCC.<sup>38</sup>

## **Electric Utilities**

### ***Investor-Owned Electric Utilities Companies***

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.<sup>39</sup> Investor-owned electric utility rates and revenues are regulated by the commission.<sup>40</sup> Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company’s size. These more frequent company filings allow the commission to monitor earnings levels on an ongoing basis and adjust customer

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<sup>33</sup> See *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648, 650 (Fla. 1980) (citing *Radio Tel. Commc’ns, Inc. v. Se. Tel. Co.*, 170 So. 2d 577, 581 (Fla. 1964)), “The commission did not have jurisdiction over radio communication service, notwithstanding the interconnection of such radio service with a regulated utility’s telephone landline. [T]he [L]egislature of Florida has never conferred upon this commission any general authority to regulate public utilities.”

<sup>34</sup> *Hawkins*, 384 So. 2d at 650.

<sup>35</sup> Ch. 2011-36, Laws of Florida

<sup>36</sup> Florida Public Service Commission, *Local Competition*,

<http://www.psc.state.fl.us/Telecommunication/TelecomLocalCompetition> (last visited Apr. 6, 2021).

<sup>37</sup> Florida Public Service Commission, *Bill Analysis for SB 1944 / HB 1567* (April 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Apr. 6, 2021).

rates quickly if a company appears to be overearning.<sup>41</sup> As of year-end 2020, Florida's electric utilities owned a collective 2,867,025 poles, which had 2,837,881 attachments from other entities.<sup>42</sup>

### ***Municipally Owned Electric Utilities***

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial, or industrial customers, usually within the boundaries of the municipality.<sup>43</sup> Municipally owned utility rates and revenues are regulated by their city commission.<sup>44</sup> The commission does not fully regulate publicly owned municipal electric utilities.<sup>45</sup> However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.<sup>46</sup>

In total, there are 34 municipal electric companies in Florida.<sup>47</sup> Most municipal electric utilities are represented by the Florida Municipal Electric Association, which serves over three million Floridians.<sup>48</sup>

### ***Rural Electric Cooperative Utilities***

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.<sup>49</sup> Rates and revenues for a cooperative utility are regulated by their elected cooperative officers.<sup>50</sup> Most cooperatives have been financed by the Rural Electrification Association and most, in Florida, are represented by the Florida Electric Cooperatives Association, Inc.<sup>51</sup>

In total there are 18 rural electric cooperatives in Florida.<sup>52</sup> The commission does not regulate the rates and service quality of cooperatives, however, it does have jurisdiction as to rate structure, territorial boundaries, bulk power supply operations, and power supply planning.<sup>53</sup>

### **Telecommunications Companies**

In 2011, the Florida Legislature deregulated telecommunications companies and consequently, the commission lost its authority to require telecommunications companies to continue performing pole inspections after July 1, 2011. Prior to losing jurisdiction, the commission had issued an order in 2006, requiring telecommunications companies to implement an eight year

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<sup>41</sup> Florida Public Service Commission, *2020 FPSC Annual Report*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Apr. 6, 2021).

<sup>42</sup> Florida Public Service Commission, *2019 Distribution Reliability Reports for IOUs in Florida, Initiative 2*, <http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability> (last visited Apr. 6, 2021).

<sup>43</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>44</sup> *Id.*

<sup>45</sup> Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.

<sup>46</sup> *Id.*

<sup>47</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>48</sup> Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Apr. 6, 2021).

<sup>49</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.

inspection program of its wooden poles based on the requirements of the National Electrical Safety Code.<sup>54</sup> Section 364.011, F.S., expressly exempts the following services from commission oversight:

- Intrastate interexchange telecommunications services;
- Broadband services, regardless of the provider, platform, or protocol;
- VoIP;
- Wireless telecommunications, including commercial mobile radio service providers;
- Basic service; and
- Nonbasic services or comparable services offered by any telecommunications company.

### III. Effect of Proposed Changes:

**Section 1** amends s. 120.80, F.S., to exempt rules adopted to implement the provisions of the bill by the Public Service Commission (commission) from being subject to statements of estimated regulatory costs from s. 120.541, F.S.

**Section 2** amends s. 366.02, F.S., to define the term:

- “Attaching entity,” to mean a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator who owns or controls pole attachments.
- “Communications services,” to have the same meaning as in s. 202.11, F.S., which includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals.
- “Pole,” to mean a pole used for electric distribution service, streetlights, communications services, or cable television services which is owned in whole or in part by a pole owner. The term does not include a pole used solely to support wireless communications services facilities.
- “Pole attachments,” to mean an attachment by a public utility, local exchange carrier, communications services provider, broadband provider, or cable television operator attached to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.
- “Pole owner,” to mean a local exchange carrier, a public utility, a communications services provider, or a cable television operator, which owns a pole; and
- “Redundant pole,” to mean a pole owned within 50 feet of a new pole intended to replace an old pole from which attachments have not been removed or transferred, that is left standing after the pole owner relocated its facilities underground or to another location.

**Section 3** amends s. 366.04, F.S., relating to the commission’s jurisdiction, granting the authority 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 bill provides the commission’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.

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<sup>54</sup> See Florida Public Service Commission, Order No. PSC-2006-0168-PAA-TL, Mar. 1, 2006, Docket No. 20060077-TP, <http://www.psc.state.fl.us/library/filings/2006/01762-2006/01762-2006.PDF> (last visited Apr. 6, 2021).

The bill provides:

- Legislative intent that parties be encouraged to enter into voluntary pole attachment agreements without commission approval and that parties not be prevented from voluntarily entering into such contracts without commission approval.
- Circumstances in which a pole owner, on a non-discriminatory basis, may deny access to its poles, including insufficient capacity, safety, reliability, and engineering requirements. Also provides a pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider the commission's approved construction and reliability standards.
- Jurisdiction for the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of pole attachment in which the Federal Communications Commission (FCC) precedent is not binding.
- Requires the commission to 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.
- A pole owner or attaching entity may provide evidence, subject to proceedings conducted pursuant to s. 120.369, 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.
- The commission must authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights in the first five formal administrative proceedings to determine pole attachment rates, so as to provide commission precedent to establish pole attachment rates and help guide negotiations toward voluntary pole attachment agreements.
- Pole attachment rate proceedings 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.
- The commission must regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, of communications services providers own poles.

The commission is required to adopt procedural rules by January 1, 2022, in order to administer and implement changes to rates, charges, terms, and conditions for pole attachments and requires the commission to provide certification to the Federal Communications Commission (FCC).

The bill requires the commission to adopt rules by April 1, 2022, which consider the interests of the subscribers and users. The rules must include:

- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management requirements; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules, consistent with s. 366.095, F.S., which limits fines to \$5,000 per offense.

The bill provides the commission with authority to access books and records of communications services providers under limited conditions; if such, any proprietary confidential business information received by the commission that is confidential or exempt under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, retains its confidential and exempt status.

**Section 4** creates s. 366.97, F.S., relating to redundant poles and transfer of ownership.

The bill provides procedures for dealing with redundant or abandoned poles which:

- Requires the commission to establish by rule a process for 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.
- Requires hardening notices to include:
  - The scope of the major hardening project, 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 major hardening project details, including the types of poles to be used. The field meeting must occur no sooner than 15 days after but no later than 60 days after notice and 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,
- Requires 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 removal. The commission is required to determine by rule the sufficiency of and requirements for removal notice and may use a joint use notification software program to accomplish removal notification.
- Allows a pole owner, if an attaching entity fails to remove a pole attachment, to remove, transfer, or relocate an attachment to a new pole at the attachment owner's expense. The bill clarifies this provision does not apply to an electric utility's pole attachments. Requires an attaching entity to submit payment to the pole owner within 60 days of receiving a transfer of attachment invoice.
- Authorizes a pole owner to seek enforcement of payment in circuit court and provides the pole owner is entitled to prejudgment interest, attorneys' fees and costs.
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense, and requires the attaching party to indemnify, defend, and hold the pole owner, its directors, officers, agents, and employees harmless, barring a finding of negligence or willful misconduct arising in connection with the transfer.
- Allows the commission to require by rule that an attaching entity post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment; and clarifies:
  - The rules do not apply to existing agreements between the pole owners and the attaching entity if the agreement expressly provides for, or disclaims, security requirements;
  - The commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities upon petition by a pole owner;
  - The bill does not prevent a party from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment;
  - It is the Legislature's intent to encourage parties to enter into voluntary agreements without commission approval; and
  - The contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act is not impaired.

The bill directs the commission to adopt rules by April 1, 2022, to implement Section 3 of the bill, including rules for the timely and coordinated removal of attachments from redundant poles and the establishment of monetary penalties.

**Section 5** directs the Division of Law Revision to replace references to “the effective date of this act,” with the date the bill becomes a law.

**Section 6** provides the bill is effective upon becoming a law.

#### **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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The financial and legal responsibilities of parties to pole attachment arrangements in Florida could substantially change depending on the implementation of the Florida Public Service Commission’s (commission) authority over pole attachments. The commission’s adoption of rules and implementation of this new authority will likely involve litigation between the affected parties. However, any pole attachment disputes will be adjudicated by the commission, rather than the Federal Communications Commission (FCC).

Entities with attachments on redundant poles may face negative financial impacts not contemplated in current negotiated pole attachment agreements

**C. Government Sector Impact:**

The bill has a negative impact to state revenues and expenditures. The commission estimates implementation of the bill will require eight full-time equivalent (FTE) positions and \$460,668 (\$31,160 in nonrecurring) in additional budget authority.<sup>55</sup> A breakdown of positions and funding is provided below.

Category	Amount
<b>Recurring Costs:</b>	
Salaries and Benefits (eight new FTEs)	\$408,884
- Three Public Utility Analysts	
- Three Engineer Specialists	
- One Sr. Attorney and One Attorney	
Expense Package for eight new FTEs	\$50,784
Salary Rate:	503,618
- 503,618 for eight new FTEs	
<b>Total Recurring Costs</b>	<b>\$460,668 / 503,618 Salary Rate</b>
<b>Nonrecurring Costs:</b>	
Expense Package: eight new FTEs	\$31,160
<b>Total Nonrecurring Costs</b>	<b>\$31,160</b>
<b>Total Costs for Fiscal Year 2021-2022<sup>56</sup></b>	<b>\$491,828<sup>57</sup></b>

Fiscal Year 2021-2022 legislative budget conference agreed to appropriate, 13 positions and \$925,566 (\$739,433 recurring) from the Regulatory Trust Fund contingent on SB 1944, House Bill 1567, or similar legislation becoming law.<sup>58</sup> This appropriation was based upon the Public Service Commission’s (commission) estimated cost to implement the new regulatory provisions contained within SB 1944, as originally filed.

The commission is authorized to assess monetary penalties for violations of provisions of the bill; however, the number and amount of monetary penalties is unknown. (See VII. Related Issues.)

**VI. Technical Deficiencies:**

None.

<sup>55</sup> Florida Public Service Commission, *Bill Analysis for SB 1944 / HB 1567 - Revised* (April 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>56</sup> *Id.*

<sup>57</sup> Email from Adam Potts, Legislative Director, Public Services Commission, to Michelle Sanders, Legislative Analyst, Senate Appropriations Subcommittee on Agriculture, Environment, and General Government (April 19, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government)

<sup>58</sup> The Florida Senate, Appropriations (Budget) by Committee Subject Area, Agriculture, Environment, and General Government, State Administration and Technology, *Conference Committee on Senate Agriculture, Environment, and General Government Appropriations/House State Administration & Technology Appropriations, Senate Offer #2, Budget Spreadsheet and Senate Offer #1, Proviso* (April 19, 2021), <https://www.flsenate.gov/Session/Appropriations/2021> (last visited Apr. 21, 2021).

**VII. Related Issues:**

Lines 191-194 and lines 296-300 of the bill provide the commission may adopt rules related to monetary penalties imposed upon communication services providers who fail to comply with any such rule of the commission, but is silent as to other types of utilities which may also have attachments on utility poles.

Traditionally, the cost associated with regulatory requirements established in Florida law have been assessed to the utilities and telecommunications companies subject to the commission's authority. The bill does not establish authority to assess regulatory assessment fees to the communication services providers that would become subject to the commissions' authority under the bill.<sup>59</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 120.80, 366.02 and 366.04.

This bill creates section 366.97 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on April 19, 2021:**

The committee substitute:

- Amends s. 120.80, F.S., to exempt the Public Service Commission (commission) rules adopt under sections 3 and 4 of the bill from the requirements of s. 120.541, F.S., relating to statements of estimated regulatory costs.
- Removes electric utilities and adds broadband service providers to the definition of “attaching entity.”
- Revises the term “pole,” to include those used for local exchange services and cable television services; and excludes ducts, conduits, right-of-ways, and poles that are used solely to support wireless communications services facilities.
- Revises the term “pole attachment,” to include attachments by local exchange carriers, broadband providers, and public utilities; and expands the term to include attachments to a pole owner’s ducts, conduits, or rights-of-way.
- Expands the term “pole owner” to include local exchange carriers.
- Expands the commission’s jurisdiction to include regulation and enforcement of rates, charges, terms, and conditions for pole attachments in general, as opposed to just disagreements between parties relating to pole attachments.
- Requires the commission to establish cost-based rates, terms, and conditions for pole attachments using Federal Communications Commission (FCC) decisions, orders, and appellate decisions in FCC cases; unless, a pole owner or attaching entity establishes that an alternative cost is appropriate and in the public interest.

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<sup>59</sup> *Id.*

- Extends the deadline for rulemaking to January 1, 2022, for provisions relating to rates, charges, terms, and conditions for pole attachments; and requires the commission to submit its pole attachment regulation certification to the FCC upon adoption of such rules.
- Deletes the provision allowing the commission to assume jurisdiction of a complaint proceeding pending before the FCC.
- Requires the commission to allow petitioning pole owners or attaching entities to participate as intervenors in the first five administrative proceedings conducted under the bill's provisions.
- Revises the scope of the rules that the commission must adopt prior to FCC certification to only include procedural rules.
- Removes conduits, ducts, pipes, pole attachments, wires, cables, and related plants and equipment regulation by the commission.
- Extends the deadlines for rulemaking to April 1, 2022, for provisions relating to safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration; and provides that such rules do not apply to communications services providers that do not own poles.
- Requires monetary penalties to be consistent with s. 366.095, F.S., which limits penalties to not more than \$5,000, per offense.
- Grants the commission authority to access books and records of communications services providers.
- Deletes legislative findings.
- Removes the requirement for communications services providers to establish storm reserve funds.
- Eliminates a pole owner's ability to deny access to a pole based on an evaluation of the financial and performance-related capabilities of the entity requesting attachment.
- Extends the timeframe for removal of a pole attachment from 90 days to 180 days.
- Requires the commission to create a process for pole owners to provide notice to attaching entities of major hardening projects; specifies certain requirements for the notice including a time for entities to review and discuss the project, which must occur no sooner than 15 days after but no later than 60 days after notice.
- Requires a removal notice to include information that allows an attaching entity to locate and identify the affected pole and the owner of attachments.
- Requires an attaching entity to submit payment to the pole owner within 60 days of receiving an invoice for transfer of an attachment; this right is enforceable in circuit court and subject to prejudgment interest, attorney fees, and costs.
- Deletes provisions relating to the transfer of title to a redundant pole from the pole owner to the noncompliant attaching entity.
- Extends the deadlines for rulemaking to April 1, 2022, for provisions relating to removal of pole attachments from redundant poles and the establishment of monetary penalties.
- Clarifies that rules requiring the posting of a security instrument do not apply to existing agreements.
- Deletes provisions requiring the commission to impose monetary penalties for failure to comply with the bills redundant pole section and eliminates broadband grant provisions.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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