

**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: SB 1944

INTRODUCER: Senator Albritton

SUBJECT: Utility and Communications Poles

DATE: April 16, 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>Pre-meeting</b>

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**I. Summary:**

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

The bill delineates circumstances in which a pole owner may deny access to its poles, including insufficient capacity, safety, and reliability and 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.

Under the bill, the commission is authorized to regulate and enforce rates, charges, 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 commission may hear and resolve complaints, including denial of pole attachment. Under the bill, the Federal Communications Commission (FCC) precedent is not binding, and the commission must assume jurisdiction over a complaint proceeding that is pending before the FCC, if requested by a party.

The bill requires the commission to adopt rules by October 1, 2021, that consider the interests of the subscribers. The rules must include:

- At least one formulae for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds for repair and replacement of facilities after natural disasters;
- Provisions for mandatory pole inspections, including repair or replacement;

- Vegetation management requirements for poles owned by communications providers;
- Establishment of storm reserve funds;
- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules.

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

- Requires pole attachments be removed from a redundant pole within 90 days of receipt of written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense after the entity fails to remove the attachment within the 90 days of receiving written notice;
- 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 harmless;
- 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;
- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located;
- 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;
- Authorizes the commission to impose monetary penalties for violation of these provisions and provides any penalties assessed must be used by the commission for installing and upgrading broadband infrastructures in unserved and underserved rural and low-income areas of Florida; and
- 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.

The bill has a negative impact to state revenues and expenditures. The commission estimates it will take 13 full-time equivalent positions and recurring costs of \$739,443 and nonrecurring costs of \$186,123 in order to implement this bill.

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>1</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>2</sup> The space requested for a pole attachment is typically one foot.

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>3</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>4</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>5</sup> Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.<sup>6</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>7</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

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<sup>1</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>2</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).

<sup>3</sup> Edison Electric Institute, *Pole Attachments 101*, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Apr. 5, 2021).

<sup>4</sup> Pub. L. No. 95-234, *codified* at 47 U.S.C. s. 224.

<sup>5</sup> Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

<sup>6</sup> 47 U.S.C. s. 224(a)(1).

<sup>7</sup> *Id.*

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>8</sup> As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.<sup>9</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>10</sup> Four of the pending complaints concern BellSouth Telecommunications LLC, d/b/a AT&T Florida (AT&T); of which two are against Florida Power and Light Company (FPL),<sup>11</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>12</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>13</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>14</sup> The FCC established the pole attachments rate under its last order.<sup>15</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>16</sup> On April 7, 2011, the FCC approved its pole attachment order.<sup>17</sup> Public power utilities are not directly impacted by the order because their

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<sup>8</sup> 47 U.S.C. s. 224(c)(2).

<sup>9</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>10</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).

<sup>11</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>12</sup> *Id.*, at 1 n.1.

<sup>13</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>14</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>15</sup> *Id.*

<sup>16</sup> 47 U.S.C. s. 224(a)(4).

<sup>17</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).

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>18</sup>

“Joint use” refers to sharing use of a utility pole by agreement between pole-owning utilities.<sup>19</sup> “Pole attachments” relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.<sup>20</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 equipment in order to build an interconnected network with reduced cost to consumers.<sup>21</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>22</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>23</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>24</sup> The NJUNS provides a dashboard system that allows members to generate tickets and track pole transfers.<sup>25</sup> Florida has been a member of the NJUNS since 1992.<sup>26</sup>

<sup>18</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>19</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>20</sup> *Id.*

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

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

<sup>23</sup> National Joint Utilities Notification System, *About: Who We are*, <https://web.njuns.com/about/> (last visited Apr. 6, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> See National Joint Utilities Notification System, *Best Practices*, <https://web.njuns.com/njuns-best-practices/> (last visited Apr. 6, 2021).

<sup>26</sup> National Joint Utilities Notification System, *Members*, <https://web.njuns.com/members/> (last visited Apr. 6, 2021).

## Florida Public Service Commission

The Florida Public Service Commission (commission) is an arm of the legislative branch of government.<sup>27</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>28</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>29</sup>

The commission monitors the safety and reliability of the electric power grid<sup>30</sup> and may order the addition or repair of infrastructure as necessary.<sup>31</sup> The commission has broad jurisdiction over 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>32</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>33</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>34</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>35</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>36</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

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<sup>27</sup> Section 350.001, F.S.

<sup>28</sup> See Florida Public Service Commission, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Apr. 6, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> Section 366.04(5) and (6), F.S.

<sup>31</sup> Section 366.05(1) and (8), F.S.

<sup>32</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>33</sup> *Hawkins*, 384 So. 2d at 650.

<sup>34</sup> Ch. 2011-36, Laws of Florida

<sup>35</sup> Florida Public Service Commission, *Local Competition*, <http://www.psc.state.fl.us/Telecommunication/TelecomLocalCompetition> (last visited Apr. 6, 2021).

<sup>36</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).

price, terms, and conditions of pole attachment agreements. Disputes are adjudicated before the FCC.<sup>37</sup>

### **Storm Reserve Funds**

Extreme wind events, like hurricanes and tornados, can destroy electric infrastructure, snapping poles and collapsing transmission towers; even underground electric systems are susceptible to the upending of fallen tree roots and erosion.<sup>38</sup> Prior to Hurricane Andrew in 1992, electric utilities could purchase commercial insurance at reasonable and affordable prices, which allowed them the financial ability to maintain relatively small storm damage reserves.<sup>39</sup> However, after Hurricane Andrew, risk management for electric utilities fundamentally changed, with insurance costs drastically increasing.<sup>40</sup> Given the change in landscape, the electric utilities asked the commission to allow them to self-insure, which the commission began addressing in 1993, giving way to a storm damage reserve balance that can accommodate most storm years.<sup>41</sup>

Currently, cable television providers, local exchange companies and communications services providers do not have storm reserve funds or cost recovery mechanisms that are established or approved by the commission.

### **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>42</sup> Investor-owned electric utility rates and revenues are regulated by the commission.<sup>43</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 rates quickly if a company appears to be overearning.<sup>44</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>45</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> See Florida Public Service Commission, *Background on Storm-related Cost Recovery Mechanisms and Review of Storm Preparedness and Restoration* (Apr. 10, 2018) (on file with the Senate Committee on Regulated Industries).

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

<sup>40</sup> *Id.* For example, prior to Hurricane Andrew, Florida Power & Light had a per-occurrence, or per-storm, insurance limit of \$350 million, which cost \$3.5 million in annual premiums. After Hurricane Andrew, the best available coverage rate was an aggregate limit of \$100 million a year with a \$23 million annual premium.

<sup>41</sup> See Florida Public Service Commission, Order No. PSC-93-0918-FOF-EI, June 17, 1993, Docket No. 930405-EI, <http://www.floridapsc.com/library/filings/1993/06506-1993/06506-1993.pdf> (last visited Apr. 6, 2021); Order No. PSC-93-0918-FOF-EI, Oct. 15, 1993, Docket No. 930867-EI, <http://www.floridapsc.com/library/filings/1993/11100-1993/11100-1993.pdf> (last visited Apr. 6, 2021).

<sup>42</sup> *Id.*

<sup>43</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).

<sup>44</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>45</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).

### ***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>46</sup> Municipally owned utility rates and revenues are regulated by their city commission.<sup>47</sup> The commission does not fully regulate publicly owned municipal electric utilities.<sup>48</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>49</sup>

In total, there are 34 municipal electric companies in Florida.<sup>50</sup> Most municipal electric utilities are represented by the Florida Municipal Electric Association, which serves over three million Floridians.<sup>51</sup>

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

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.<sup>52</sup> Rates and revenues for a cooperative utility are regulated by their elected cooperative officers.<sup>53</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>54</sup>

In total there are 18 rural electric cooperatives in Florida.<sup>55</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>56</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 inspection program of its wooden poles based on the requirements of the National Electrical Safety Code.<sup>57</sup> Section 364.011, F.S., expressly exempts the following services from commission oversight:

- Intrastate interexchange telecommunications services;

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<sup>46</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>47</sup> *Id.*

<sup>48</sup> Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.

<sup>49</sup> *Id.*

<sup>50</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>51</sup> Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Apr. 6, 2021).

<sup>52</sup> Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.

<sup>57</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).

- 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. 366.02, F.S., to define the term:

- “Attaching entity,” to mean a local exchange carrier, a public utility or an electric utility, a communications services 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, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner; or a streetlight fixture owned in whole or in part by a public utility.
- “Pole attachments,” to mean local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.
- “Pole owner,” to mean a local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or wire or wireless communications.
- “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 to the new pole;
  - Left standing after the pole owner has relocated its facilities underground but where other entities’ pole attachments remain; or
  - Left standing after a pole owner’s attachments have been removed to another location to accommodate a new service route.

**Section 2** grants the Florida Public Service Commission (commission) jurisdiction to regulate and enforce rates, charges, terms, and conditions for pole attachments when the parties are unable to reach an agreement.

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.

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. Also provides a pole owner can

consider the financial and performance-related capabilities of the entity requesting attachment.

- Jurisdiction for the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of pole attachment, and provides the Federal Communications Commission (FCC) precedent is not binding in such proceedings.
- A requirement for the commission to assume jurisdiction of a complaint proceeding pending before the FCC, if requested to do so by a party to the proceeding.
- The commission must regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communications services providers.

The bill requires the commission to adopt rules by October 1, 2021, which consider the interests of the subscribers and users. The rules must include:

- At least one formulae for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds;
- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management;
- Establishment of storm reserve funds;
- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules.

**Section 3** creates s. 366.97, F.S., relating to redundant poles, transfer of ownership, and provides for penalties. The bill includes the following statements of legislative intent:

- It is in the public interest for poles to be hardened against extreme weather conditions by replacing older poles, which may result in redundant poles;
- Pole owners may incur liability when prevented from removing redundant poles because of remaining attachments still in use by other entities;
- Redundant poles are aesthetically unappealing and may create overcrowding and unsafe conditions; and
- It is in the public interest to timely and sequentially remove pole attachments from redundant poles and transfer ownership of a pole to a user from an owner no longer using it.

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

- Requires attachments to be removed from a redundant pole within 90 days of receiving written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense;
- 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 harmless;
- 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; and

- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located.

Under the bill, the commission is required to impose fines for violation of the provisions within Section 3 of the bill by entities under its jurisdiction. Upon petition by a pole owner, the commission may issue orders for the removal or transfer of pole attachments by noncompliant attaching entities, and must impose monetary penalties.

The commission is required to use monetary penalties to provide grants for installing and upgrading broadband infrastructure in unserved and underserved rural and low-income areas of the state. The commission is also required to establish criteria for awarding grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure. Such entities must submit an application and proposal detailing how the grant funds would further the objective of expanding broadband services in unserved and underserved areas.

The bill repeats a statement of legislative intent that the provisions in Section 3 should not be construed to prevent parties from voluntarily entering into such contracts without commission approval, or construed to impair contract rights in existence before the bill becomes effective.

The bill directs the commission to adopt rules by October 1, 2021, to implement Section 3 of the bill, including rules for the sequential removal of attachments from redundant poles and the establishment of monetary penalties.

**Section 4** 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 5** 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. In addition, entities who fail to comply with the new regulations may face monetary penalties.

To the extent grant funds are available, businesses and organizations may submit an application and proposal to install or upgrade broadband infrastructure in unserved and underserved rural and low-income areas of Florida.

C. Government Sector Impact:

The bill has a negative impact to state revenues and expenditures. The commission estimates implementation of the bill will require 13 full-time equivalent (FTE) positions and \$925,566 (\$186,123 in nonrecurring) in additional budget authority.<sup>58</sup> The commission expects additional workload to impact existing staff and has included salary rate of 200,000 for pay additives or pay increases for such increase.<sup>59</sup> A breakdown of positions and funding is provided below.

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<sup>58</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>59</sup> Public Service Commission, *Explanation of the Fiscal Impact [of HB 1567 / SB 1944]* (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

Category	Amount
<b>Recurring Costs:</b>	
Salaries and Benefits (13 new FTEs)	\$656,919
- Six Public Utility Analysts	
- Four Engineer Specialists	
- Three Attorneys	
Expense Package for 13 new FTEs	\$82,524
Salary Rate:	686,607
- 486,607 for 13 new FTEs	
- 200,000 for existing FTEs	
<b>Total Recurring Costs</b>	<b>\$739,443 / 686, 607 Salary Rate</b>
<b>Nonrecurring Costs:</b>	
Expense Package: 13 new FTEs	\$50,635
Other Operating Costs (two new vehicles and Hardware/Storage and Application Development)	\$135,488
<b>Total Nonrecurring Costs</b>	<b>\$186,123</b>
<b>Total Costs for Fiscal Year 2021-2022<sup>60</sup></b>	<b>\$925,566</b>

Currently, the commission has 33 vacant positions, with 22 positions vacant over 180 days. The annualized amount of these vacancies is \$1.3 million. The commission partially attributes the vacant positions to a September 2020 hiring freeze and partially to budget management decisions to stay within existing appropriation, consideration of statewide reserve calculations<sup>61</sup> and an uneven cash flow.<sup>62</sup>

The commission’s Regulatory Trust Fund does not appear to be able to support an additional appropriation to implement provisions of the bill. Based on the five-year historical review of the commission’s operating budget and revenue, as shown in the below chart, the commission’s unreserved balance has fluctuated from a low of \$52,122 to a high of \$1,297,502. The commission’s average unreserved fund balance for the last five years is \$706,720.

<sup>60</sup> *Id.*

<sup>61</sup> Testimony from Braulio Baez, Executive Director, Public Service Commission, appearing before the House Appropriations State Administration & Technology Appropriations Subcommittee on April 7, 2021 regarding House Bill 1567, <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=7154> (last visited Apr. 13, 2021).

<sup>62</sup> Telephone conversation with Peter Queirolo, Budget Analyst, Public Service Commission to Michelle Sanders, Legislative Analyst, Senate Appropriations Subcommittee on Agriculture, Environment, and General Government (April 13, 2021). See also, Florida Fiscal Portal, *Public Service Commission, Agency Legislative Budget Request for Fiscal Year 2021-2022, Schedule 1: Trust Funds Available and Schedule 1B (if applicable) – Department Level* – at p. 7, <http://floridafiscalportal.state.fl.us/Publications.aspx?AgyID=6100> (last visited Apr. 8, 2021).

The Public Service Commission Five Year Financial History					
		Operating Budget <sup>63</sup>			
Fiscal Year	FTEs	Revenue <sup>64</sup>	General Revenue	Trust Fund	Unreserved Fund Balance
2015-2016	280	\$25,557,900.50	\$213,219.00	\$24,923,307.00	\$421,374.50
2016-2017	277	\$25,236,194.39	\$214,889.00	\$24,969,183.00	\$52,122.39
2017-2018	267	\$25,782,840.11		\$25,001,711.00	\$781,129.11
2018-2019	267	\$26,469,900.41		\$25,172,398.00	\$1,297,502.41
2019-2020	271	\$26,686,455.29		\$25,704,985.00	\$981,470.29

Source: Transparency Florida Reports (10 Year History of Appropriations and Trust Fund Revenues)

The Regulatory Trust Fund’s primary revenues are from regulatory assessment fees charged to utilities regulated by the commission. Revenues are collected primarily twice a year, but the majority of expenditures are paid out monthly or quarterly.<sup>65</sup>

As part of its Fiscal Year 2021-2022 Legislative Budget Request, the commission submitted a Schedule 1 Trust Funds Available report, dated October 8, 2020, which projects operating expenditures of \$26,933,272, revenues of \$27,497,647 and an adjusted unreserved balance of \$1,193,907.<sup>66</sup>

If an appropriation is provided to implement this bill, the balance in the commission’s Regulatory Trust Fund appears to be insufficient to cover the increased appropriation. The bill does not currently provide an appropriation.

The commission is authorized to assess monetary penalties for violations of provisions of the bill; however, such penalties must be used to provide grants for installing and upgrading broadband infrastructure to unserved and underserved rural and low-income areas of the state. The bill does not address a penalty structure or provide regulatory assessment fees, which could potentially offset the cost of implementation. (See VII. Related Issues.)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill authorizes the Florida Public Service Commission (commission) to impose a monetary penalty for a violation of s. 366.97, F.S. The bill does not provide a maximum amount for the authorized fine. However, s. 366.095, F.S., related to penalties, provides the commission with the

<sup>63</sup> Transparency Florida, Reports, *Ten Year History of Appropriations*, <http://www.transparencyflorida.gov/Reports/TYHAppropAgy.aspx?ID=61000000&FY=&SC=F> (last visited Apr. 8, 2021).

<sup>64</sup> Transparency Florida, Reports, Trust Fund Revenues, <http://www.transparencyflorida.gov/Reports/TrustFundRev10Report.aspx?FY=&RT=TF> (last visited Apr. 8, 2021).

<sup>65</sup> Florida Fiscal Portal, *Public Service Commission, Agency Legislative Budget Request for Fiscal Year 2021-2022, Schedule 1: Trust Funds Available and Schedule 1B (if applicable) – Department Level* <http://floridafiscalportal.state.fl.us/Publications.aspx?AgyID=6100> (last visited Apr. 8, 2021).

<sup>66</sup> *Id.*

authority to impose a penalty on entities subject to its jurisdiction for failure to comply or willful violation of any commission rule or provision within ch. 366, F.S. The fine may not exceed \$5,000 per offense and each day in which refusal to comply or the violation continues constitutes a separate offense. In addition, s. 350.127, F.S., related to penalties, rules and execution of contracts, contains similar provisions and authority to impose penalties, to include violations of commission orders and the authority to amend, suspend, or revoke any certificate issued by the commission.

Lines 162-164 of the bill provides 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.

The bill references electricity distribution in its definition of a pole but does not define this term. It is generally industry practice that electrical distribution is defined as 69 kV or less, poles included. However, distribution wires are sometimes attached to transmission poles, making it unclear whether transmission poles would be included under the definition of “pole” under the bill.<sup>67</sup>

The bill adds significant areas of regulation to the commission’s jurisdiction including telecommunications services, which the commission has not regulated since 2011, and wireless communications and cable-television providers, which have never been regulated by the commission. Given the stringent requirements of Florida’s Administrative Procedure Act, it is unlikely the commission will be able to adopt rules by October 1, 2021.<sup>68</sup>

The bill requires the commission to administer the grant program; however, the commission currently does not administer any grants. Florida’s Office of Broadband, housed within the Florida Department of Economic Opportunity, is charged with developing, marketing and promoting broadband internet services, pursuant to s. 364.0315, F.S., and may already have the capability to administer additional funds resulting from the monetary penalties imposed by this bill.<sup>69</sup> The establishment of a trust fund may also be required to deposit penalties assessed for non-compliance with commission rules and may be required for disbursements associated with broadband grants.<sup>70</sup>

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>71</sup>

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<sup>67</sup> Florida Public Service Commission, *Bill Analysis for SB 1944* (Mar. 15, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>68</sup> *Id.*

<sup>69</sup> See Florida Department of Economic Opportunity, Office of Broadband, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited Apr. 7, 2021).

<sup>70</sup> Florida Public Service Commission, *Bill Analysis for SB 1944* (Mar. 15, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>71</sup> *Id.*

In addition, it does not appear the commission would have access to the books and records of communications services providers, as it does over jurisdictional electric, gas and water and wastewater utilities. The commission's ability to verify compliance with rules, including the communications services providers' storm reserve funds, may be limited.<sup>72</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 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.)

None.

**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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<sup>72</sup> Id.