

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1944

INTRODUCER: Senator Albritton

SUBJECT: Utility and Communications Poles

DATE: March 23, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Sharon</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | <u>Hackett</u> | <u>Ryon</u> | <u>CA</u> | Pre-meeting |
| 3. | _____ | _____ | <u>AP</u> | _____ |

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 provides that a pole owner may consider the 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, 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 formula 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 communication services providers for failure to comply with commission rules.

The bill creates s. 366.97, F.S.; relating to redundant poles, their transfer of ownership, and provides for penalties. The bill:

- 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;
- 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 impose monetary penalties for violation of these provisions; and
- Provides that parties may enter into pole attachment 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 is effective upon becoming law.

II. Present Situation:

Regulation of Pole Attachment

In 1978, Congress passed the "Pole Attachment Act," which added s. 224 to the Communications Act of 1934, to require the FCC to establish rates, terms, and conditions for pole attachments for the cable industry.¹

In 1996, the "Telecommunications Act" added provisions making access to utility poles mandatory for telecommunications service providers, providing for nondiscriminatory access, unless there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.² Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.³ The term "utility" is defined as:

¹ P.L. 95-234, *codified* at 47 U.S.C. s. 224.

² P.L. 104-104, *codified* at 47 U.S.C. s. 224(f).

³ 47 U.S.C. s. 224(a)(1).

[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.⁴

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.”⁵ As of March 19, 2020, 22 states and the District of Columbia have reversed preemption.⁶ Florida does not presently regulate pole attachments.

There are currently five pending “Section 224 Pole Attachment Complaints” filed with the FCC.⁷ 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)⁸, and two are against Duke Energy affiliated companies.

The complaint filed by AT&T against FPL on July 1, 2019, alleged that the rate paid to attach AT&T’s facilities to FPL was unjust and unreasonable under FCC rules and orders issued pursuant to 47 U.S.C. s. 224.⁹ The FCC granted the complaint in part, finding that AT&T was entitled to a reduced rate for the period ending on December 31, 2018.¹⁰ Under that order, the parties were unable to agree as to the proper calculation of the reduced rate and the FCC further decided that AT&T was entitled to a refund of any overpayments for the period of July 1, 2014 to December 31, 2018.¹¹ The FCC established the pole attachments rate under its last order.¹²

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

⁴ *Id.*

⁵ 47 USC § 224(c)(2).

⁶ FCC, *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 Mar. 14, 2021).

⁷ See FCC, *EB - Market Disputes Resolution Division Pending Complaints*, <https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints> (last visited Mar. 14, 2021).

⁸ See FCC, *Memorandum Opinion and Order, DA-21-57*, January 14, 2021, <https://docs.fcc.gov/public/attachments/DA-21-57A1.pdf> (last visited Mar. 14, 2021). After release of the bureau order in AT&T vs FPL, the parties were unable resolve their differences and AT&T then filed a second complaint against FPL with the FCC asserting that the provisions invoked by FPL in its Notice of Termination are unjust and unreasonable under section 224 and requested that they be amended.

⁹ *Id.*, at 1 n.1.

¹⁰ FCC, *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 March 14, 2021).

¹¹ FCC, *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 March 14, 2021).

¹² *Id.*

right-of-way owned or controlled by a utility.¹³ On April 7, 2011, the FCC approved its pole attachment order.¹⁴ 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.¹⁵

“Joint use” refers to sharing use of a utility pole by agreement between pole-owning utilities.¹⁶ “Pole attachments” relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰ After a tragic incident occurred during a pole transfer, it was decided that certified letters and phone calls were no longer a suitable way to provide notice.²¹ NJUNS,

¹³ 47 USC s. 224(a)(4).

¹⁴ FCC, FCC Reforms Pole Attachment Rules to Boost Broadband Deployment, FCC 11-50, April 7, 2011, <https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment> (last visited Mar. 14, 2021).

¹⁵ 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 Mar. 14, 2021).

¹⁶ See Edison Electric Institute, *Pole Attachments 101*, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Mar. 14, 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.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NJUNS, *About: Who We are*, <https://web.njuns.com/about/> (last visited Mar. 14, 2021).

²¹ *Id.*

provides a dashboard system that allows members to generate tickets and track pole transfers.²² Florida has been a member of NJUNS since 1992.²³

Florida Public Service Commission

The commission is an arm of the legislative branch of government.²⁴ The role of the commission is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.²⁵ In order to do so, the commission exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.²⁶

Currently, the commission does not have the authority to regulate pole attachments, absent the legislature expressly conferring this jurisdiction on the commission.²⁷ "Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the legislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan."²⁸

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.²⁹ 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.³⁰ However, after Hurricane Andrew, risk management for electric utilities fundamentally changed, with insurance costs drastically increasing.³¹ 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.³²

²² See NJUNS, *Best Practices*, <https://web.njuns.com/njuns-best-practices/> (last visited Mar. 14, 2021).

²³ NJUNS, *Members*, <https://web.njuns.com/njuns-best-practices/> (last visited Mar. 14, 2021).

²⁴ Section 350.001, F.S.

²⁵ See FPSC, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 14, 2021).

²⁶ *Id.*

²⁷ 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 legislature of Florida has never conferred upon this commission any general authority to regulate public utilities."

²⁸ *Hawkins*, 384 So. 2d at 650.

²⁹ See FPSC, *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).

³⁰ *Id.*

³¹ *Id.* For example, prior to Hurricane Andrew, Florida Power and 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.

³² See, e.g., 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 Mar. 14, 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 Mar. 14, 2021).

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.³³ Investor-owned electric utility rates and revenues are regulated by the commission.³⁴ 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.³⁵ 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.³⁶

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.³⁷ Municipally owned utility rates and revenues are regulated by their city commission.³⁸ The commission does not fully regulate publicly owned municipal electric utilities.³⁹ However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁴⁰

In total there are 34 municipal electric companies in Florida.⁴¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.⁴²

Rural Electric Cooperative Utilities

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.⁴³ Rates and revenues for a cooperative utility are regulated by their

³³ *Id.*

³⁴ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 14, 2021).

³⁵ FPSC, *2020 FPSC Annual Report*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 14, 2021).

³⁶ FPSC, 2019 Distribution Reliability Reports for IOUs in Florida, *Initiative 2*, <http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability> (last visited Mar. 14, 2021).

³⁷ FDACS, *Electric Utilities*, *supra* at n. 28.

³⁸ *Id.*

³⁹ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴⁰ *Id.*

⁴¹ FDACS, *Electric Utilities*, *supra* at n. 28.

⁴² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 14, 2021).

⁴³ FDACS, *Electric Utilities*, *supra* at n. 28.

elected cooperative officers.⁴⁴ Most cooperatives have been financed by the Rural Electrification Association and most, in Florida, are represented by the Florida Electric Cooperatives Association, Inc.⁴⁵

In total there are 18 rural electric cooperatives in Florida.⁴⁶ 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.⁴⁷

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.⁴⁸ 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. 366.02, F.S. to define the terms:

- “Attaching entity,” means 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,” has 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” meaning a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity, owned by a pole owner; or a streetlight fixture owned by a public utility.
- “Pole attachments,” means local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.
- “Pole owner,” means 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 for electrical purposes or wire or wireless communications.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴⁸ See FPSC, Order No. PSC-2006-0168-PAA-TL, March 1, 2006, Docket No. 20060077-

TP, <http://www.psc.state.fl.us/library/filings/2006/01762-2006/01762-2006.PDF> (last visited Mar. 14, 2021).

- “Redundant pole,” means:
 - A pole owned that is 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;
 - A pole that still has attachments after the pole owner has relocated its facilities underground; or
 - A pole left standing after a pole owner’s attachments have been removed to another location to accommodate a new service route.

Section 2 grants the 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 that the commission’s authority includes but is not limited to that 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 can deny access to its poles, including insufficient capacity, safety, reliability, and provides that 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, including denial of pole attachment, and provides that 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 communication 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 formula 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 communication services providers for failure to comply with commission rules.

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

- It is in the public’s 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 must use all 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 must 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 commission must 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 that the bill becomes a law.

Section 5 provides that 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:

None.

C. Government Sector Impact:

The commission estimates the implementation of this bill will require 13 full-time positions and \$925,566 (\$790,078 recurring) from the Regulatory Trust Fund based on staffing needs and other expenses associated with the additional regulatory responsibilities.⁴⁹

VI. Technical Deficiencies:

None.

⁴⁹ Public Service Commission, *Analysis re: SB 1944 / HB 1567*, March 15, 2021 (On file with Community Affairs Committee).

VII. Related Issues:

The bill authorizes the 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., on penalties, provides the commission with the 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., contains a similar provision, which includes violations of commission orders and the authority to amend, suspend, or revoke any certificate issued by the commission.

Lines 162-164 of the bill subject communication services providers that fail to comply with any such rule of the commission to monetary fines 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.⁵⁰

The bill adds significant areas of regulation to the Public Service 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 that the commission will be able to promulgate rules by October 1, 2021.⁵¹

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.⁵² 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.⁵³

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.

⁵⁰ See Public Service Commission, *Bill Analysis for SB 1944* (Mar. 15, 2021) (on file with the Senate Committee on Regulated Industries).

⁵¹ *Id.*

⁵² See Florida Department of Economic Opportunity, Office of Broadband, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited (Mar. 14, 2021)).

⁵³ See PSC, *Analysis, supra* at n. 49.

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.

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