

CHAPTER 2021-191

Committee Substitute for Senate Bill No. 1944

An act relating to utility and communications poles; amending s. 120.80, F.S.; exempting certain rules adopted by the Public Service Commission from legislative ratification requirements; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; requiring the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission to establish cost-based rates, charges, terms, and conditions for pole attachments and apply certain decisions and orders of the Federal Communications Commission; requiring the commission to authorize certain parties to participate as an intervenor in a specified number of administrative proceedings; requiring the commission to adopt rules by a specified date and provide certification to the Federal Communications Commission upon such adoption; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communications services providers; providing an exception; requiring the commission to adopt rules, including monetary penalties, by a specified date; authorizing the commission to access the books and records of communications services providers for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; creating s. 366.97, F.S.; requiring pole owners to give advance notice to affected attaching entities of hardening projects; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of electronic or written notice from the pole owner; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; requiring attaching entities to submit payment within a specified timeframe; authorizing pole owners to seek enforcement of such payment; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing a pole owner to remove and sell or dispose of certain abandoned pole attachments; authorizing the commission to issue orders for the removal or transfer of pole attachments by noncompliant attaching entities upon petition by a pole owner; providing construction; providing a directive to the Division of Law Revision; providing an effective date.

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

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

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

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

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

366.02 Definitions.—As used in this chapter:

(4) “Attaching entity” means a person that is a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator that owns or controls pole attachments.

(5) “Communications services provider” means an entity providing communications services as defined in s. 202.11(1).

(6) “Pole” means a pole used for electric distribution service, streetlights, communications services, local exchange 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 service facilities or a pole with no electrical facilities attached.

(7) “Pole attachment” means any attachment by a public utility, local exchange carrier communications services provider, broadband provider, or cable television operator to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.

(8) “Pole owner” means a local exchange carrier, a public utility, a communications services provider, or a cable television operator that owns a pole.

(9) “Redundant pole” means a pole owned or controlled by a pole owner which is:

(a) Near or adjacent to a new pole that is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;

(b) Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

(c) Left standing after a pole owner’s attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Section 3. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions of pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, attachments to poles owned by a public utility, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In the development of rules pursuant to paragraph (g), the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission.

(e) The commission shall hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection. When taking action upon such complaints, the commission shall establish just and reasonable cost-based rates, terms, and conditions for pole attachments and shall apply the decisions and orders of the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission regarding pole attachment rates, terms, or conditions in determining just and reasonable pole attachment rates, terms, and conditions unless a pole owner or attaching entity establishes by competent substantial evidence pursuant to proceedings conducted pursuant to ss. 120.569 and 120.57 that an alternative cost-based pole attachment rate is just and reasonable and in the public interest.

(f) In the administration and implementation of this subsection, the commission shall authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under chapter 120 in the first four formal administrative proceedings conducted to determine pole attachment rates under this section. These initial four proceedings are intended to provide commission precedent on the establishment of pole attachment rates by the commission and help guide negotiations toward voluntary pole attachment agreements. After the fourth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate.

(g) The commission shall propose procedural rules to administer and implement this subsection. The rules must be proposed for adoption no later than January 1, 2022, and, upon adoption of such rules, shall provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers. This subsection does not apply to a communications services provider that owns no poles.

(b) The commission shall adopt rules to administer and implement this subsection. The rules must be proposed for adoption no later than April 1, 2022, and must address at least the following:

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

2. Monetary penalties to be imposed upon any communications services provider that fails to comply with any such rule of the commission. Monetary penalties imposed by the commission must be consistent with s. 366.095.

(c) The commission may access the books and records of communications services providers to the limited extent necessary to perform its functions and to exercise its authority under subsection (8), this subsection, and s. 366.97(4). Upon request by a communications services provider, any records that are received by the commission under this paragraph which are proprietary confidential business information under s. 364.183 or s. 366.093 shall retain their status as confidential or exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

366.97 Redundant poles; transfer of ownership.—

(1) Pole owners shall provide at least 180 calendar days' electronic or written advance notice to affected attaching entities of major hardening projects the purpose of which is to replace poles to ensure the poles meet extreme wind loading requirements. The advance hardening project notice must include:

(a) The scope of the major hardening project, to the extent determined, the locations of the affected poles, the expected start date, and the expected completion date of the major hardening project; and

(b) The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the planned major hardening project details, including the types of replacement poles to be used. The field meeting must occur no sooner than 15 calendar days after the date of the notice and no later than 60 calendar days after the notice and, at a minimum, must include sufficient information to enable the attaching entity to locate the affected poles and identify the owner of any facilities attached to the poles.

(2)(a) An attaching entity must remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or a written notice from the pole owner requesting such removal. A pole owner may use a joint use notification software program to accomplish such written or electronic removal notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause as agreed to by the parties or as determined by the commission or its designee within 30 calendar days after the 180 calendar-day period under paragraph (a), the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments. An attaching entity shall submit payment to the pole owner within 60 days after receipt of the pole owner's invoice for transfer or relocation of the pole attachments. A pole owner may seek to enforce its right to payment under this paragraph in circuit court and, if it prevails, is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court costs. Upon receipt by the pole owner of written notice, the attaching entity that fails to comply with this subsection shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.

(c) If a pole attachment is abandoned by an attaching entity that fails to remove or transfer its attachments in accordance with this section, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment,

except to the extent the attaching entity's noncompliance is excused by an event of force majeure or other good cause as determined by the commission. An attaching entity shall submit payment to the pole owner within 60 days after receipt of the pole owner's invoice. A pole owner may seek to enforce its right to payment under this paragraph in circuit court and, if it prevails, is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court costs. Upon receipt by the pole owner of written notice, the noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

(3) Upon petition by a pole owner or an attaching entity, the commission may issue orders enforcing this section which do not expressly relate to circuit court jurisdiction.

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

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

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

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

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

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.