

1 A bill to be entitled
2 An act relating to broadband Internet infrastructure;
3 providing a short title; amending s. 212.08, F.S.;
4 exempting the purchase, lease, or sale of certain
5 equipment used by a provider of communications
6 services or a provider of Internet access services in
7 this state from the sales and use tax; providing
8 definitions; creating s. 364.0137, F.S.; providing
9 legislative findings; providing definitions; requiring
10 municipal electric utilities to ensure that their
11 broadband provider rates and fees meet certain
12 requirements, make certain records available to
13 broadband providers, and establish just and reasonable
14 terms and conditions for broadband provider
15 attachments; prohibiting utilities from prohibiting a
16 broadband provider from using certain techniques and
17 equipment if used in accordance with certain safety
18 standards; requiring any required pole replacement to
19 be completed within a specified timeframe; prohibiting
20 utilities from requiring a broadband provider to
21 comply with attachment specifications that exceed
22 specified established safety levels; providing
23 construction; authorizing municipal electric utilities
24 and broadband providers to negotiate agreements or
25 renegotiate existing agreements and to petition the

26 | court after a specified timeframe if unable to reach
27 | an agreement; requiring the court to make a
28 | determination within a specified timeframe; specifying
29 | that such determination applies retroactively;
30 | authorizing municipal electric utilities and broadband
31 | providers to seek any available remedies; providing an
32 | effective date.

33 |
34 | WHEREAS, although this state is a national leader in
35 | private sector broadband investment, including billions of
36 | dollars invested by existing service providers, estimates show
37 | that as many as 804,000 residents lack access to the services,
38 | particularly in rural areas where the cost to deploy facilities
39 | is significantly higher than in more densely populated areas,
40 | and

41 | WHEREAS, the lack of advanced communication capabilities,
42 | broadband facilities, and services in certain areas deprives
43 | residents of access to opportunities, and

44 | WHEREAS, the Legislature finds that it is in the public
45 | interest of this state to encourage private-sector investment in
46 | broadband deployment and upgrades, encourage greater
47 | participation and access for all residents, and remove
48 | regulatory and economic barriers to such investment, and

49 | WHEREAS, the Legislature finds that it is in the public
50 | interest of this state to encourage and facilitate the

51 development of and investment in broadband facilities to advance
 52 Florida's economic competitiveness, create job opportunities,
 53 enhance health care, and enhance educational advancement, and

54 WHEREAS, the Legislature finds that reasonable rates,
 55 terms, and conditions for access and use of municipal utility
 56 poles by broadband service providers are essential for the
 57 deployment, upgrade, and maintenance of broadband service, and

58 WHEREAS, it is critical that such access rates, terms, and
 59 conditions be reasonable and fully compensatory, as approved by
 60 the federal pole attachment framework imposed by the
 61 Communications Act of 1934, as amended, 47 U.S.C. s. 224, and
 62 the regulations of the Federal Communications Commission
 63 governing utilities whose pole attachments are regulated under
 64 federal law, NOW, THEREFORE,

65

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

67

68 Section 1. This act may be cited as the "Florida Broadband
 69 Deployment Act of 2021."

70 Section 2. Paragraph (ppp) is added to subsection (7) of
 71 section 212.08, Florida Statutes, to read:

72 212.08 Sales, rental, use, consumption, distribution, and
 73 storage tax; specified exemptions.—The sale at retail, the
 74 rental, the use, the consumption, the distribution, and the
 75 storage to be used or consumed in this state of the following

76 are hereby specifically exempt from the tax imposed by this
 77 chapter.

78 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 79 entity by this chapter do not inure to any transaction that is
 80 otherwise taxable under this chapter when payment is made by a
 81 representative or employee of the entity by any means,
 82 including, but not limited to, cash, check, or credit card, even
 83 when that representative or employee is subsequently reimbursed
 84 by the entity. In addition, exemptions provided to any entity by
 85 this subsection do not inure to any transaction that is
 86 otherwise taxable under this chapter unless the entity has
 87 obtained a sales tax exemption certificate from the department
 88 or the entity obtains or provides other documentation as
 89 required by the department. Eligible purchases or leases made
 90 with such a certificate must be in strict compliance with this
 91 subsection and departmental rules, and any person who makes an
 92 exempt purchase with a certificate that is not in strict
 93 compliance with this subsection and the rules is liable for and
 94 shall pay the tax. The department may adopt rules to administer
 95 this subsection.

96 (ppp) Equipment purchased, leased, or sold in this state
 97 for use by a provider of communications services or a provider
 98 of Internet access services.—

99 1. The purchase, lease, or sale of equipment used in the
 100 business of providing communications services or Internet access

101 services, in whole or in part, by a provider of communications
102 services or Internet access services is exempt from the tax
103 imposed by this chapter.

104 2. As used in this paragraph, the term:

105 a. "Equipment used in the business of providing
106 communications services or Internet access services" means all
107 equipment, machinery, software, or other infrastructure that is:

108 (I) Classified as central office equipment, station
109 equipment or apparatus, station connection, wiring, or large
110 private branch exchanges according to the uniform system of
111 accounts which was adopted and prescribed for the provider by
112 the Public Service Commission; or

113 (II) Part of a national, regional, or local headend or
114 similar facility operated by a provider of communications
115 services or Internet access services.

116 b. "Communications services" has the same meaning as in s.
117 202.11(1).

118 c. "Internet access service" has the same meaning as in s.
119 202.11(6).

120 d. "Provider of communications services or Internet access
121 services" means a dealer as defined in s. 202.11(2) and any
122 member of an affiliated group as defined in s. 202.37(1)(c)2.
123 with such dealer.

124 Section 3. Section 364.0137, Florida Statutes, is created
125 to read:

126 364.0137 Broadband service infrastructure.—
 127 (1) The Legislature finds that just, reasonable, and
 128 nondiscriminatory rates, terms, and conditions for the access
 129 and use of municipal electric utility poles by broadband service
 130 providers is essential to deploy, upgrade, and maintain
 131 broadband service to residents of the state. It is critical that
 132 municipal electric utility pole access and use rates are just,
 133 reasonable, nondiscriminatory, and fully compensatory, which may
 134 be achieved under the federal law framework applicable to
 135 utility poles owned and operated by investor-owned utilities.
 136 The terms and conditions associated with the access and use of
 137 utility poles must be consistent with 47 U.S.C. s. 224, the
 138 Communications Act of 1934, as amended, and the regulations of
 139 the Federal Communications Commission, as those regulations
 140 existed on July 1, 2021.
 141 (2) As used in this section, the term:
 142 (a) "Attachment" means any attachment to a utility pole or
 143 structure, duct, conduit, or right-of-way owned or controlled by
 144 a municipal electric utility.
 145 (b) "Broadband provider" means a person who provides
 146 broadband service, and includes a person who provides or offers
 147 additional services to the public in addition to broadband
 148 service.
 149 (c) "Broadband service" means a service that provides
 150 high-speed access to the Internet at a rate of at least 25

151 megabits per second in the downstream direction and at least 3
152 megabits per second in the upstream direction.

153 (d) "Utility pole" means a pole owned or controlled by a
154 municipal electric utility which is used in whole or in part for
155 electric distribution.

156 (3) To promote the deployment of broadband service to all
157 residents, each municipal electric utility:

158 (a) Shall provide broadband providers with access to any
159 to utility poles it owns or operates and adopt rates, terms, and
160 conditions for such access which are consistent with the
161 provisions of 47 U.S.C. s. 224 and any Federal Communications
162 Commission regulations and decisions adopted thereunder, as such
163 regulations and decisions existed on July 1, 2021. The rates,
164 terms, and conditions must be nondiscriminatory, just, and
165 reasonable and may not favor a pole owner or an affiliate of the
166 pole owner.

167 (b)1. Shall ensure that any rate or fee that the municipal
168 electric utility charges to a broadband provider for an
169 attachment to a utility pole does not:

170 a. Discriminate between or among such providers and any
171 other attaching entity, regardless of the services furnished.

172 b. Exceed the annual recurring rate calculated in
173 accordance with the cable service rate formula established by 47
174 U.S.C. s. 224(d) or any Federal Communications Commission rule,
175 regulation, or decision adopted thereunder, as such existed on

176 July 1, 2021.

177 2. Shall maintain and make available to a broadband
178 provider all records necessary to calculate the rate it charges
179 to the provider. The records must include:

180 a. All costs associated with utility poles; any
181 improvements or reinforcements thereto; and any appurtenances,
182 including costs associated with storm hardening efforts, which
183 must be identified with particularity.

184 b. Identification of the actual height, usable space, and
185 appurtenances associated with each utility pole.

186 c. Information regarding any ancillary utility poles and
187 the costs associated with such poles, which are separately
188 identifiable from the principal utility poles they support.

189 d. To the extent the accumulated depreciation for a
190 utility pole which is used to calculate the rate is based on
191 records specific to pole plant rather than based on proration of
192 accumulated depreciation tracked at a higher aggregated plant
193 amount, sufficiently detailed data to support the pole specific
194 figure.

195 (c) Shall establish just and reasonable terms and
196 conditions for a broadband provider attachment which do not
197 discriminate between or among providers or any other attaching
198 entity and which are consistent with 47 U.S.C. s. 224 and any
199 Federal Communications Commission rule, regulation, or decision
200 adopted thereunder, as such existed on July 1, 2021, except

201 that:

202 1. If necessary to accommodate a broadband provider's new
203 attachment, the municipal electric utility shall rearrange,
204 expand, replace, or otherwise safely reengineer any utility pole
205 upon the request of the broadband provider. If the municipal
206 electric utility is required to replace a utility pole pursuant
207 to this subparagraph, the municipal electric utility may not
208 require a broadband provider to reimburse any costs associated
209 with such pole replacement beyond the recovery of its actual and
210 reasonable costs of advancing the retirement of the existing
211 utility pole. Such costs shall be measured by all of the
212 following:

213 a. The net book value of the existing utility pole.

214 b. The incremental cost, if any, of installing a utility
215 pole with greater capacity than the utility pole the municipal
216 electric utility would have installed in the normal course of
217 its operations.

218 c. Any other incremental costs proved by the municipal
219 electric utility, provided that such incremental costs do not
220 include any costs associated with a utility pole the utility
221 would have installed at the same location.

222 2. The municipal electric utility may not prohibit the
223 broadband provider from using boxing techniques, extension arms,
224 attachments below existing attachments where space is
225 unavailable above existing attachments, temporary attachments,

226 or other methods or equipment, provided that such use complies
227 with the National Electric Safety Code or other applicable
228 safety codes.

229 3. With respect to a utility pole replacement, the
230 municipal electric utility must complete such pole replacement
231 and any other work necessary to accommodate the broadband
232 provider's attachment to the replaced pole within 90 days after
233 receiving a complete attachment request from a broadband
234 provider.

235 (d) May not require a broadband provider to comply with
236 any utility pole attachment specifications that exceed the
237 specifications in the National Electric Safety Code, applicable
238 fire safety codes, or any building code or similar code of
239 general applicability for the protection of public health,
240 safety, or welfare which was adopted by the applicable local
241 governmental jurisdiction before the broadband provider filed a
242 utility pole attachment application. However, this section may
243 not be construed to expand the power of any local governmental
244 jurisdiction.

245 (4) A municipal electric utility or broadband provider may
246 submit a written request to negotiate any agreement or to amend,
247 modify, or renew any existing agreement addressing attachments
248 by the broadband provider to conform such agreements to this
249 section. The parties must negotiate in good faith for at least
250 60 days after the written request, after which either party may

251 petition the circuit court to determine rates, terms, and
252 conditions for the agreements consistent with this section. The
253 court shall make a determination within 180 days after the
254 filing of the petition for that determination. The court's
255 determination applies retroactively to attachments between the
256 date of the written request to negotiate and the date of the
257 commission's determination, and applies to the continuing terms
258 of all existing attachments that were installed before the
259 written request. Between the date of the written request to
260 negotiate and the date of the court's determination:

261 (a) The terms and conditions of any existing agreement
262 addressing such attachments apply, subject to true-up, to put
263 the parties in the positions in which they would have been had
264 the court's determination been in effect on the date of the
265 written request to negotiate.

266 (b) In the absence of such existing agreement, unless the
267 parties agree otherwise, the court, within 30 days after the
268 petition for a determination, must establish interim rates,
269 terms, and conditions that will apply, subject to true-up, to
270 put the parties in the positions in which they would have been
271 had the court's determination been in effect on the date of the
272 written request to negotiate.

273 (5) A municipal electric utility or broadband provider may
274 seek any available remedies at law or equity for violations of
275 this section. In all cases involving this section, and to the

HB 1239

2021

276 | extent not otherwise provided by this section, the court shall
277 | give effect to the provisions and intent of 47 U.S.C. s. 224 and
278 | any Federal Communications Commission rules, regulations, or
279 | decisions adopted thereunder, as such existed on July 1, 2021.

280 | Section 4. This act shall take effect July 1, 2021.