

1 A bill to be entitled
2 An act relating to underground electric distribution
3 facilities; creating s. 366.201, F.S.; creating the
4 "Reliable Electricity Enhancement Act"; creating s.
5 366.202, F.S.; providing legislative intent; creating s.
6 366.203, F.S.; providing that as of a specified date
7 placement of electric distribution facilities underground
8 is the industry standard for new distribution facilities;
9 providing an exception; requiring public utilities to
10 aggressively promote and encourage the timely and orderly
11 conversion of existing overhead distribution facilities to
12 underground facilities; directing the Public Service
13 Commission to adopt rules to encourage and promote the
14 conversion from overhead facilities to underground
15 facilities; creating s. 366.204, F.S.; providing
16 additional duties of a public utility; requiring certain
17 reports; providing a penalty; creating s. 366.205, F.S.;
18 requiring the commission to ensure that only the minimum
19 reasonable general and indirect costs associated with
20 underground facilities are included as costs of the
21 underground facilities for any purpose; creating 366.206,
22 F.S.; encouraging the use of rights-of-way for the
23 location of underground facilities; providing a rebuttable
24 presumption that rights-of-way are sufficient for the
25 location of underground facilities; providing an
26 exception; requiring certain easement rights granted to a
27 public utility to be temporary and ultimately vest in the
28 governmental entity having jurisdiction; creating s.

29 | 366.207, F.S.; encouraging the use of rear yards as
30 | locations for placing underground utilities; creating s.
31 | 366.208, F.S.; encouraging competition in providing
32 | utility construction services; requiring public utilities
33 | to make certain competitive alternatives available to
34 | governmental entities; creating ss. 125.3402, 166.261,
35 | 189.4052, and 190.018, F.S.; declaring that it is the
36 | policy of the state that counties, municipalities, special
37 | districts, and community development districts convert
38 | electric distribution, telephone, and cable television
39 | facilities from overhead systems to underground
40 | facilities; providing that if a county, municipality,
41 | special district, or community development district pays
42 | for part or all of the cost of converting overhead
43 | facilities to underground facilities, it must receive fair
44 | credit for the payments if and when the entity elects to
45 | establish an electric utility, telephone, or cable
46 | television system; creating ss. 125.3403, 166.262,
47 | 189.4053, and 190.019, F.S.; providing the contractual
48 | terms that must be included in a utility franchise;
49 | prohibiting a governmental entity from giving or granting
50 | a franchise without reserving to the governmental entity
51 | the right to purchase the utility at the expiration of the
52 | franchise; providing that the utility franchise is void
53 | under certain circumstances; amending s. 364.03, F.S.;
54 | directing the commission and the entities that provide
55 | service in this state to consistently and continuously
56 | promote and encourage all reasonable means to enhance the

57 reliability of the telecommunications system in the state;
 58 amending s. 366.04, F.S.; declaring that the installation
 59 of underground electric distribution facilities to replace
 60 existing overhead facilities is in the public interest in
 61 the state; exempting certain government-owned electric
 62 utilities from the commission's jurisdiction over
 63 territorial disputes; providing an effective date.
 64

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

67 Section 1. Section 366.201, Florida Statutes, is created
 68 to read:

69 366.201 Short title.--Sections 366.201-366.208 may be
 70 cited as the "Reliable Electricity Enhancement Act."

71 Section 2. Section 366.202, Florida Statutes, is created
 72 to read:

73 366.202 Legislative findings and intent.--

74 (1) The Legislature finds that:

75 (a) More than two-thirds of all new electric distribution
 76 facilities currently being installed in this state are being
 77 installed as underground facilities;

78 (b) More than one-third of all electric distribution
 79 facilities currently in service in this state are underground
 80 facilities, and that approximately one-half of all customers
 81 served by public utilities are served from underground
 82 facilities;

83 (c) Underground distribution service is the preferred
 84 standard of service in this state and that underground service

85 is, in fact, becoming the general standard of service for public
86 utilities;

87 (d) Many reports indicate that areas served by underground
88 distribution facilities had less severe and less prolonged
89 losses of electric service during the hurricanes that struck the
90 state in 2004 and 2005; and

91 (e) A significant number of meteorological experts are
92 predicting that more hurricanes are likely to strike the state
93 with significantly greater frequency over the foreseeable future
94 than the state experienced in the 50-year period before 2004.

95 (2) The Legislature further finds that reliability of
96 electric service is critical to the public health, safety, and
97 welfare of the residents of the state, and that minimizing the
98 severity, extent, and duration of outages of electric service is
99 likewise critical to the health, safety, and welfare.
100 Accordingly, the Legislature directs the Public Service
101 Commission and the public utilities that provide service in this
102 state to consistently and continuously seek, promote, and
103 encourage all reasonable means of enhancing and maximizing the
104 reliability of the electric supply system, including
105 distribution systems as well as transmission and generation
106 systems. Further, the Legislature directs the commission and all
107 public utilities to aggressively promote and encourage the
108 installation of underground distribution facilities to the
109 maximum extent feasible, and to aggressively promote and
110 encourage the timely and orderly conversion of existing overhead
111 facilities to underground facilities.

112 (3) The mandatory provisions of ss. 366.201-366.208 apply

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113 only to public utilities as defined in s. 366.02. Municipal and
114 cooperative utilities providing electric service in the state
115 are encouraged to seek and implement all reasonable means of
116 enhancing electric service reliability in the state, and to
117 install underground electric distribution facilities to the
118 maximum extent feasible, giving due consideration to the unique
119 circumstances of each utility.

120 Section 3. Section 366.203, Florida Statutes, is created
121 to read:

122 366.203 Standard of service.--

123 (1) Effective January 1, 2007, underground electric
124 distribution is presumed to constitute the standard for new
125 electric distribution service in this state. This presumption is
126 rebuttable in specific cases if, in proceedings before the
127 commission, a clear and convincing showing is made that, in a
128 particular application, underground electric distribution is
129 less desirable than overhead facilities. To rebut the
130 presumption, the commission must consider the relevant factors,
131 including the relative reliability of underground compared to
132 overhead systems in the particular application, the installation
133 costs for underground and overhead facilities, the operating and
134 maintenance costs for overhead and underground facilities, and
135 any other identifiable costs associated with overhead and
136 underground facilities. The commission must also consider,
137 without limitation:

138 (a) The overall cost of accidental electrocutions and
139 temporary and permanent disabilities to utility employees and
140 the public;

- 141 (b) The overall cost of vehicular accidents involving
142 distribution facilities;
- 143 (c) Ascertainable and measurable costs of adverse health
144 effects;
- 145 (d) The costs associated with rights-of-way and easements;
- 146 (e) The total operating and maintenance costs, including
147 costs of tree trimming for overhead facilities;
- 148 (f) The total costs incurred and losses sustained by
149 utility customers as a result of outages due to storm damage;
150 and
- 151 (g) The costs of associated insurance, attorney's fees,
152 and legal settlements and costs.

153

154 In any proceedings before the commission, the commission shall
155 specifically include, as an estimated cost of the overhead
156 facilities being considered, the costs of having to remove and
157 replace a new overhead system due to storm damage at least once
158 during its projected useful life.

159 (2) Effective July 1, 2006, all public utilities are
160 directed to aggressively seek, promote, and encourage the timely
161 and orderly conversion of existing overhead distribution
162 facilities to underground facilities, so that the majority of
163 persons served by public utilities will come to enjoy the
164 reliability benefits of underground distribution service.
165 Specifically, it is the intent of the Legislature that, to the
166 maximum extent feasible, existing overhead facilities be
167 converted to underground systems in a timely and orderly way,
168 with preference and priority given to overhead facilities and

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169 systems that are being relocated due to road-widening or other
170 similar activities, and to overhead systems that are at or near
171 the end of their useful lives.

172 (3) The commission shall adopt rules to encourage and
173 promote, to the maximum extent feasible, the conversion of
174 existing overhead systems to underground facilities in a timely
175 and orderly manner giving due consideration to the factors
176 deemed relevant by the commission and consistent with the public
177 interest, including:

178 (a) The overall cost of accidental electrocutions and
179 temporary and permanent disabilities to both utility employees
180 and others;

181 (b) The overall cost of vehicular accidents involving
182 distribution facilities;

183 (c) Ascertainable and measurable costs of adverse health
184 effects;

185 (d) The costs associated with rights-of-way and easements;

186 (e) The total operating and maintenance costs, including,
187 without limitation, costs of tree trimming for overhead
188 facilities;

189 (f) The total costs incurred and losses sustained by
190 utility customers as a result of outages due to storm damage;
191 and

192 (g) The costs of associated insurance, attorney's fees,
193 and legal settlements and costs.

194 Section 4. Section 366.204, Florida Statutes, is created
195 to read:

196 366.204 Duties of public utilities.--

197 (1) In addition to the general duties set forth in s.
198 366.03, each public utility shall:

199 (a) Maintain adequate and accurate records and data
200 regarding the relative reliability of overhead and underground
201 facilities, including the number, frequency, and duration of all
202 outages on the distribution system; whether each outage was the
203 result of an event directly affecting overhead or underground
204 facilities; and any other information that the commission may
205 prescribe by rule to be maintained.

206 (b) At least once every 2 years, prepare a comprehensive
207 and detailed report concerning the relative reliability of
208 overhead and underground systems, including summaries of the
209 number, frequency, and duration of all outages on the
210 distribution system and the causes of the outages; whether the
211 outages resulted from events directly affecting overhead or
212 underground facilities; and any other information that the
213 commission may prescribe by rule as appropriate for inclusion in
214 the reports.

215 (c) Maintain accurate records regarding the costs of
216 installing, maintaining, and operating overhead and underground
217 systems and facilities, such that the original cost, approximate
218 depreciated value, and operating and maintenance costs of
219 underground and overhead facilities, and also the removal cost
220 of overhead facilities, can be readily compiled and calculated
221 separately and comparably for overhead and underground
222 facilities.

223 (d) Timely prepare and provide, at the request of any
224 local governmental unit, a report concerning the relative

225 reliability of the electric distribution systems providing
226 service within the geographic jurisdiction of the governmental
227 unit, at no cost to the governmental unit.

228 (e) Timely prepare and provide, at the request of any
229 local governmental unit, a report showing in reasonable and
230 understandable detail the estimated original cost, approximate
231 depreciated value, and operating and maintenance costs of
232 underground and overhead facilities, and also the removal cost
233 of overhead facilities, at no cost to the governmental unit.

234 (f) Work cooperatively, proactively, promptly, diligently,
235 and in good faith with any local governmental unit or
236 homeowners' association that wishes to participate in converting
237 existing overhead systems to underground facilities.

238 (2) By January 1, 2007, each public utility shall prepare
239 a detailed report regarding:

240 (a) The damage to overhead and underground facilities on
241 each public utility's distribution system caused by the
242 hurricanes that struck the state in 2004 and 2005, in order that
243 the extent and cost of damage to overhead and underground
244 facilities can be readily and fairly compared; and

245 (b) The outages sustained by each public utility's
246 customers due to damage to the utility's distribution systems
247 caused by the hurricanes that struck the state in 2004 and 2005,
248 in order that the causes of the outages, the points on the
249 distribution system at which the outages originated, and the
250 duration of the outages can be readily and fairly compared as
251 between overhead and underground facilities.

252 (3) A public utility may not willfully discourage or fail

253 to seek, promote, and encourage the installation of new
 254 underground utility facilities or the conversion of existing
 255 overhead systems to underground systems. Any public utility that
 256 violates this subsection is subject to the penalties set forth
 257 in s. 350.127.

258 Section 5. Section 366.205, Florida Statutes, is created
 259 to read:

260 366.205 Limitation on inclusion of general and indirect
 261 costs in determining costs or payments for underground
 262 facilities.--In any proceedings in which the cost of, or payment
 263 for, underground facilities is at issue, the commission shall
 264 ensure that only the minimum reasonable general and indirect
 265 costs associated with underground facilities, whether such
 266 facilities are contemplated or have been installed, are included
 267 as costs of the underground facilities for any purpose. This
 268 section shall be strictly construed to ensure that no general or
 269 indirect costs are assigned or allocated to underground
 270 facilities, or accounted for in such a way as to provide a
 271 disincentive to the installation of underground facilities,
 272 unless the general or indirect costs are properly attributable
 273 to the costs of underground facilities.

274 Section 6. Section 366.206, Florida Statutes, is created
 275 to read:

276 366.206 Rights-of-way; easements.--

277 (1) The use of rights-of-way for the location of
 278 underground facilities is encouraged to the maximum extent
 279 feasible, consistent with safety and cost considerations. It is
 280 presumed, subject to a rebuttal by clear and convincing evidence

281 in a specific proceeding before the commission, that rights-of-
 282 way are sufficient for the location of underground facilities.
 283 If a municipality, county, special district, or other
 284 governmental entity agrees to be responsible for the costs
 285 associated with a future relocation of facilities located within
 286 the governmental entity's rights-of-way, the issue of future
 287 relocation costs to the public utility is irrelevant when
 288 determining whether the governmental entity's right-of-way is
 289 sufficient for the location of underground facilities or if an
 290 easement is required for the facilities.

291 (2) All easements granted to public utilities on or after
 292 July 1, 2006, must state that all permanent rights granted by
 293 the easement vest in the governmental entity in whose geographic
 294 jurisdiction the easement exists, with the public utility having
 295 the rights that are granted by the easement only for so long as
 296 it holds a franchise to provide service within the governmental
 297 entity's jurisdiction. Each easement must provide specifically
 298 that the easement, and the rights thereunder, transfer
 299 automatically, by operation of the provisions of the easement
 300 itself, to the respective governmental entity upon termination
 301 or expiration of any franchise granted to the public utility, or
 302 upon the governmental entity's establishing an electric utility
 303 system to serve within any part, or all, of its geographic
 304 jurisdiction.

305 Section 7. Section 366.207, Florida Statutes, is created
 306 to read:

307 366.207 Use of rear yard easements encouraged.--If
 308 existing overhead facilities are located within rear yard

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309 easements, using rear yard easements for the installation of new
310 underground facilities is encouraged. The utility may require
311 that the easements be kept clear of obstructions in order to
312 ensure access to the underground facilities.

313 Section 8. Section 366.208, Florida Statutes, is created
314 to read:

315 366.208 Encouraging competition in providing utility
316 construction services.--It is the policy of the state to
317 promote, to the maximum extent feasible and practicable,
318 competition in all economic activity in the state, including the
319 provision of utility construction services. Public utilities
320 shall pursue competitive alternatives from qualified vendors and
321 make such alternatives available to governmental entities that
322 desire to convert existing overhead facilities to underground
323 facilities.

324 Section 9. Section 125.3402, Florida Statutes, is created
325 to read:

326 125.3402 Credits to counties for contributions paid toward
327 the cost of underground distribution facilities.--

328 (1) It is the policy of the state to encourage counties to
329 convert electric distribution, telephone, and cable television
330 facilities providing service within their geographic
331 jurisdictions from overhead systems to underground facilities in
332 order to secure for their residents the benefits of such
333 underground facilities and systems. It is further the policy of
334 the state to ensure that, if a county pays for part or all of
335 the cost of converting overhead facilities to underground
336 facilities, it receive fair credit for such payments if and when

337 the county elects to establish a county-owned electric utility,
338 telephone, or cable television systems.

339 (2) If a county has paid a differential cost reflecting
340 the difference in cost between the cost of the underground
341 facilities installed and the cost of equivalent new overhead
342 facilities for the installation of new underground facilities,
343 and the county subsequently decides to purchase the public
344 utility's or other provider's facilities as part of establishing
345 a county-owned electric utility, telephone, or cable television
346 system, whether under eminent domain or other proceedings, at
347 the county's option:

348 (a) In any proceedings to determine the purchase price for
349 the facilities being purchased, the county shall receive full
350 credit for such differential payments made; or

351 (b) The county shall have the right to purchase the
352 underground system by paying the public utility or other
353 provider the difference between the cost of the new underground
354 system installed and the payment that the county made.

355
356 In order for a county to receive fair credit for the value that
357 it contributed to convert overhead facilities to underground
358 facilities, this section applies to payments made by the county
359 before or after July 1, 2006. This section applies whether the
360 county paid the public utility or other provider to install the
361 new underground facilities or engaged a private contractor to
362 install the underground facilities and received a credit from
363 the public utility or other provider.

364 (3) If a county pays the full cost of installing new

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365 underground facilities without any credit from the public
366 utility or other provider for the cost of an equivalent new
367 overhead facility, the county has a vested fee simple ownership
368 right in the underground facilities along with any easements and
369 easement rights associated with the underground facilities.
370 However, the public utility or other provider retains sufficient
371 rights of access in order to operate and maintain the
372 underground facilities under the terms and conditions agreed
373 upon by the county and the public utility or other provider.
374 When considering such terms and conditions, the Legislature
375 finds and states that a leasehold interest of the public
376 utility, at an annual lease payment of \$1 per year for all
377 facilities and property, including any applicable easement
378 rights, located within the county's geographic area is
379 sufficient for this purpose. The Legislature further finds and
380 declares that, alternatively, the public utility or other
381 provider has a vested time-limited ownership interest with the
382 fee simple title remaining vested in the county. This interest
383 may not exceed the duration of any franchise agreement and is
384 deemed sufficient to satisfy the public utility's or other
385 provider's need for an ownership interest to allow it adequate
386 access to the underground facilities in order to operate and
387 maintain the systems. If the public utility or other provider
388 and the county are unable to agree on this matter, the county,
389 in its sole discretion, shall determine which of the ownership
390 structures shall apply.

391 Section 10. Section 125.3403, Florida Statutes, is created
392 to read:

393 125.3403 Terms for which a utility franchise may be
 394 granted; conditions.--

395 (1) (a) A county may not give or grant any franchise or
 396 right to use a street for operating along or across the street a
 397 street railroad, water works, telephone, cable television, gas
 398 or electric business, or other business requiring the use of
 399 mains, pipes, wires, or similar facilities in any street for a
 400 term exceeding 30 years. At the sole option and discretion of
 401 the county, any county that is negotiating for a new franchise,
 402 or in which a renewal franchise agreement is being negotiated as
 403 the current franchise is about to expire or has expired, may
 404 require that any new franchise agreement be for a period of 5
 405 years.

406 (b) If the entity with whom the county is negotiating
 407 refuses or delays in negotiating a franchise term of 5 years, or
 408 longer at the county's option, the county may file a civil
 409 action in circuit court for a declaratory judgment, reformation,
 410 or injunctive relief, or any such other relief as the court
 411 finds appropriate, requiring that the franchise term be set at 5
 412 years or such longer term as prayed by the county. If the county
 413 is successful, the entity with whom the county is negotiating is
 414 liable to the county for all of the county's reasonable
 415 attorney's fees and costs of bringing the action.

416 (2) A county may not give or grant any franchise governed
 417 by this section without reserving to the county the right to
 418 purchase the street railroad, water works, telephone, cable
 419 television, gas or electric business, or other business at the
 420 expiration of the franchise. The right of reservation includes

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421 all related property used under or in connection with the
422 franchise or right, or any such part of the property which the
423 county may desire to purchase. The value of the franchise
424 property, real and personal, desired by the county shall be
425 fixed by arbitration as may be provided by law.

426 (3) A franchise may not be granted which contains or
427 includes a provision that prohibits a county from competing with
428 any street railroad, water works, telephone, cable television,
429 gas or electric business, or other similar business obtaining a
430 franchise from the county for a period longer than 5 years.

431 (4) Any franchise or right granted for a period longer
432 than 30 years, granted without the right to purchase the
433 franchise as set forth in this section, or including a provision
434 intended to limit competition with the county for a period
435 longer than 5 years, is void. Notwithstanding the voiding of any
436 such franchise, the entity to whom the franchise had been
437 granted shall continue to be liable to pay any applicable
438 franchise fees, which would otherwise have been due under the
439 franchise, to the county for so long as the entity continues to
440 operate and conduct its business in the county.

441 Section 11. Section 166.261, Florida Statutes, is created
442 to read:

443 166.261 Credits to municipalities for contributions paid
444 toward the cost of underground distribution facilities.--

445 (1) It is the policy of the state to encourage
446 municipalities to convert electric distribution, telephone, and
447 cable television facilities providing service within their
448 geographic jurisdictions from overhead systems to underground

449 facilities in order to secure for their residents the benefits
450 of such underground facilities and systems. It is further the
451 policy of the state to ensure that, if a municipality pays for
452 part or all of the cost of converting overhead facilities to
453 underground facilities, it receive fair credit for such payments
454 if and when the municipality elects to establish a municipality-
455 owned electric utility, telephone, or cable television systems.

456 (2) If a municipality, corporate entity, individual
457 citizen, or group of citizens, including, without limitation, a
458 civic association, neighborhood association, homeowners'
459 association, or similar group, has paid a differential cost
460 reflecting the difference in cost between the cost of the
461 underground facilities installed and the cost of equivalent new
462 overhead facilities for the installation of new underground
463 facilities, and the municipality subsequently decides to
464 purchase the public utility's or other provider's facilities as
465 part of establishing a municipality-owned electric utility,
466 telephone, or cable television system, whether under eminent
467 domain or other proceedings, at the municipality's option:

468 (a) In any proceedings to determine the purchase price for
469 the facilities being purchased, the municipality shall receive
470 full credit for such differential payments made, whether by the
471 municipality, a corporate entity, an individual citizen, or a
472 group of citizens; or

473 (b) The municipality shall have the right to purchase the
474 underground system by paying the public utility or other
475 provider the difference between the cost of the new underground
476 system installed and the payment that the municipality or others

477 made.

478

479 In order for a municipality and its citizens to receive fair
480 credit for the value that they contributed to convert overhead
481 facilities to underground facilities, this section applies to
482 payments made by the municipality or its citizens before and
483 after July 1, 2006. This section applies whether the
484 municipality paid the public utility or other provider to
485 install the new underground facilities or engaged a private
486 contractor to install the underground facilities and received a
487 credit from the public utility or other provider.

488 (3) If the full cost of installing new underground
489 facilities is paid by a municipality or its citizens without any
490 credit from the public utility or other provider for the cost of
491 an equivalent new overhead facility, the municipality has a
492 vested fee simple ownership right in the underground facilities
493 along with any easements and easement rights associated with the
494 underground facilities. However, the public utility or other
495 provider retains sufficient rights of access in order to operate
496 and maintain the underground facilities under the terms and
497 conditions agreed upon by the municipality and the public
498 utility or other provider. When considering such terms and
499 conditions, the Legislature finds and states that a leasehold
500 interest of the public utility, at an annual lease payment of \$1
501 per year for all facilities and property, including any
502 applicable easement rights, located within the municipality's
503 geographic area is sufficient for this purpose. The Legislature
504 further finds and declares that, alternatively, the public

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505 utility or other provider has a vested time-limited ownership
506 interest with the fee simple title remaining vested in the
507 municipality. This interest may not exceed the duration of any
508 franchise agreement and is deemed sufficient to satisfy the
509 public utility's or other provider's need for an ownership
510 interest to allow it adequate access to the underground
511 facilities in order to operate and maintain the systems. If the
512 public utility or other provider and the municipality are unable
513 to agree on this matter, the municipality, in its sole
514 discretion, shall determine which of the ownership structures
515 shall apply.

516 Section 12. Section 166.262, Florida Statutes, is created
517 to read:

518 166.262 Terms for which a utility franchise may be
519 granted; conditions.--

520 (1) (a) A municipality may not give or grant any franchise
521 or right to use a street for operating along or across the
522 street a street railroad, water works, telephone, cable
523 television, gas or electric business, or other business
524 requiring the use of mains, pipes, wires, or similar facilities
525 in any street for a term exceeding 30 years. At the sole option
526 and discretion of the municipality, a municipality that is
527 negotiating for a new franchise, or in which a renewal franchise
528 agreement is being negotiated as the current franchise is about
529 to expire or has expired, may require that any new franchise
530 agreement be for a period of 5 years.

531 (b) If the entity with whom the municipality is
532 negotiating refuses or delays in negotiating a franchise term of

533 5 years, or longer at the municipality's option, the
534 municipality may file a civil action in circuit court for a
535 declaratory judgment, reformation, or injunctive relief, or any
536 such other relief as the court finds appropriate, requiring that
537 the franchise term be set at 5 years or such longer term as
538 prayed by the municipality. If the municipality is successful,
539 the entity with whom the municipality is negotiating is liable
540 to the municipality for all of the municipality's reasonable
541 attorney's fees and costs of bringing the action.

542 (2) A municipality may not give or grant any franchise
543 governed by this section without reserving to the municipality
544 the right to purchase the street railroad, water works,
545 telephone, cable television, gas or electric business, or other
546 business at the expiration of the franchise. The right of
547 reservation includes all related property used under or in
548 connection with the franchise or right, or any such part of the
549 property which the municipality may desire to purchase. The
550 value of the franchise property, real and personal, desired by
551 the municipality shall be fixed by arbitration as may be
552 provided by law.

553 (3) A franchise may not be granted which contains or
554 includes a provision that prohibits a municipality from
555 competing with any street railroad, water works, telephone,
556 cable television, gas or electric business, or other similar
557 business obtaining a franchise from the municipality for a
558 period longer than 5 years.

559 (4) Any franchise or right granted for a period longer
560 than 30 years, granted without the right to purchase the

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561 franchise as set forth in this section, or including a provision
562 intended to limit competition with the municipality for a period
563 longer than 5 years, is void. Notwithstanding the voiding of any
564 such franchise, the entity to whom the franchise had been
565 granted shall continue to be liable to pay any applicable
566 franchise fees, which would otherwise have been due under the
567 franchise, to the municipality for so long as the entity
568 continues to operate and conduct its business in the
569 municipality.

570 Section 13. Section 189.4052, Florida Statutes, is created
571 to read:

572 189.4052 Credits to special districts for contributions
573 paid toward the cost of underground distribution facilities.--

574 (1) It is the policy of the state to encourage special
575 districts to convert electric distribution, telephone, and cable
576 television facilities providing service within their geographic
577 jurisdictions from overhead systems to underground facilities in
578 order to secure for their residents the benefits of such
579 underground facilities and systems. It is further the policy of
580 the state to ensure that, if a special district pays for part or
581 all of the cost of converting overhead facilities to underground
582 facilities, the special district receives fair credit for such
583 payments if and when the special district elects to establish a
584 special district-owned electric utility, telephone, or cable
585 television systems.

586 (2) If a special district has paid a differential cost
587 reflecting the difference in cost between the cost of the
588 underground facilities installed and the cost of equivalent new

589 overhead facilities for the installation of new underground
 590 facilities, and the special district subsequently decides to
 591 purchase the public utility's or other provider's facilities as
 592 part of establishing a special district-owned electric utility,
 593 telephone, or cable television system, whether under eminent
 594 domain or other proceedings, at the special district's option:

595 (a) In any proceedings to determine the purchase price for
 596 the facilities being purchased, the special district shall
 597 receive full credit for the differential payments made; or

598 (b) The special district has the right to purchase the
 599 underground system by paying the public utility or other
 600 provider the difference between the cost of the new underground
 601 system installed and the payment that the special district made.

602
 603 In order for a special district to receive fair credit for the
 604 value that it contributed to convert overhead facilities to
 605 underground facilities, this section applies to payments made by
 606 the special district before and after July 1, 2006. This section
 607 applies whether the special district paid the public utility or
 608 other provider to install the new underground facilities or
 609 engaged a private contractor to install the underground
 610 facilities and received a credit from the public utility or
 611 other provider.

612 (3) If a special district pays the full cost of installing
 613 new underground facilities without any credit from the public
 614 utility or other provider for the cost of an equivalent new
 615 overhead facility, it has a vested fee simple ownership right in
 616 the underground facilities along with any easements and easement

617 rights associated with the underground facilities. However, the
618 public utility or other provider retains sufficient rights of
619 access in order to operate and maintain the underground
620 facilities under the terms and conditions agreed upon by the
621 special district and the public utility or other provider. When
622 considering such terms and conditions, the Legislature finds and
623 states that a leasehold interest of the public utility, at an
624 annual lease payment of \$1 per year for all facilities and
625 property, including any applicable easement rights, located
626 within the special district's geographic area is sufficient for
627 this purpose. The Legislature further finds and declares that,
628 alternatively, the public utility or other provider has a vested
629 time-limited ownership interest with the fee simple title
630 remaining vested in the special district. This interest may not
631 exceed the duration of any franchise agreement and is deemed
632 sufficient to satisfy the public utility's or other provider's
633 need for an ownership interest to allow it adequate access to
634 the underground facilities in order to operate and maintain the
635 systems. If the public utility or other provider and the special
636 district are unable to agree on this matter, the special
637 district, in its sole discretion, shall determine which of the
638 ownership structures shall apply.

639 Section 14. Section 189.4053, Florida Statutes, is created
640 to read:

641 189.4053 Terms for which a utility franchise may be
642 granted; conditions.--

643 (1)(a) Special districts created under this chapter shall
644 have, to the extent allowed by law, the power to grant

645 franchises to entities that wish to operate a street railroad,
646 water works, telephone, cable television, gas or electric
647 business, or other business requiring the use of mains, pipes,
648 wires, or similar facilities in any street in the district.
649 However, a special district may not give or grant any franchise
650 or right to use a street for operating along or across the
651 street a street railroad, water works, telephone, cable
652 television, gas or electric business, or other business
653 requiring the use of mains, pipes, wires, or similar facilities
654 in any street for a term exceeding 30 years. At the sole option
655 and discretion of the special district, a special district that
656 is negotiating for a new franchise, or in which a renewal
657 franchise agreement is being negotiated as the current franchise
658 is about to expire or has expired, may require that any new
659 franchise agreement be for a period of 5 years.

660 (b) If the entity with whom the special district is
661 negotiating refuses or delays in negotiating a franchise term of
662 5 years, or longer at the special district's option, the special
663 district may file a civil action in circuit court for a
664 declaratory judgment, reformation, or injunctive relief, or any
665 such other relief as the court finds appropriate, requiring that
666 the franchise term be set at 5 years or such longer term as
667 prayed by the special district. If the special district is
668 successful, the entity with whom the special district is
669 negotiating is liable to the special district for all of the
670 special district's reasonable attorney's fees and costs of
671 bringing the action.

672 (2) A special district may not give or grant any franchise

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673 governed by this section without reserving to the special
674 district the right to purchase the street railroad, water works,
675 telephone, cable television, gas or electric business, or other
676 business at the expiration of the franchise. The right of
677 reservation includes all related property used under or in
678 connection with the franchise or right, or any such part of the
679 property which the special district may desire to purchase. The
680 value of the franchise property, real and personal, desired by
681 the special district shall be fixed by arbitration as may be
682 provided by law.

683 (3) A franchise may not be granted which contains or
684 includes a provision that prohibits a special district from
685 competing with any street railroad, water works, telephone,
686 cable television, gas or electric business, or other similar
687 business obtaining a franchise from the special district for a
688 period longer than 5 years.

689 (4) Any franchise or right granted for a period longer
690 than 30 years, granted without the right to purchase the
691 franchise as set forth in this section, or including a provision
692 intended to limit competition with the special district for a
693 period longer than 5 years, is void. Notwithstanding the voiding
694 of any such franchise, the entity to whom the franchise had been
695 granted shall continue to be liable to pay any applicable
696 franchise fees, which would otherwise have been due under the
697 franchise, to the special district for so long as the entity
698 continues to operate and conduct its business in the special
699 district.

700 Section 15. Section 190.018, Florida Statutes, is created

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701 to read:

702 190.018 Credits to community development districts for
703 contributions paid toward the cost of underground distribution
704 facilities.--

705 (1) It is the policy of the state to encourage community
706 development districts to convert electric distribution,
707 telephone, and cable television facilities providing service
708 within their geographic jurisdictions from overhead systems to
709 underground facilities in order to secure for their residents
710 the benefits of such underground facilities and systems. It is
711 further the policy of the state to ensure that, if a community
712 development district pays for part or all of the cost of
713 converting overhead facilities to underground facilities, the
714 community development district receives fair credit for such
715 payments if and when the community development district elects
716 to establish a community development district-owned electric
717 utility, telephone, or cable television system.

718 (2) If a community development district has paid a
719 differential cost reflecting the difference in cost between the
720 cost of the underground facilities installed and the cost of
721 equivalent new overhead facilities for the installation of new
722 underground facilities, and the community development district
723 subsequently decides to purchase the public utility's or other
724 provider's facilities as part of establishing a community
725 development district-owned electric utility, telephone, or cable
726 television system, whether under eminent domain or other
727 proceedings, at the community development district's option:

728 (a) In any proceedings to determine the purchase price for

729 the facilities being purchased, the community development
730 district shall receive full credit for the differential payments
731 made; or

732 (b) The community development district has the right to
733 purchase the underground system by paying the public utility or
734 other provider the difference between the cost of the new
735 underground system installed and the payment that the district
736 made.

737
738 In order for a community development district to receive fair
739 credit for the value that it contributed to convert overhead
740 facilities to underground facilities, this section applies to
741 payments made by the community development district before and
742 after July 1, 2006. This section applies whether the community
743 development district paid the public utility or other provider
744 to install the new underground facilities or engaged a private
745 contractor to install the underground facilities and received a
746 credit from the public utility or other provider.

747 (3) If a community development district pays the full cost
748 of installing new underground facilities without any credit from
749 the public utility or other provider for the cost of an
750 equivalent new overhead facility, the community development
751 district has a vested fee simple ownership right in the
752 underground facilities along with any easements and easement
753 rights associated with the underground facilities. However, the
754 public utility or other provider retains sufficient rights of
755 access in order to operate and maintain the underground
756 facilities under the terms and conditions agreed upon by the

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757 community development district and the public utility or other
758 provider. When considering such terms and conditions, the
759 Legislature finds and states that a leasehold interest of the
760 public utility, at an annual lease payment of \$1 per year for
761 all facilities and property, including any applicable easement
762 rights, located within the community development district's
763 geographic area is sufficient for this purpose. The Legislature
764 further finds and declares that, alternatively, the public
765 utility or other provider has a vested time-limited ownership
766 interest with the fee simple title remaining vested in the
767 district. This interest may not exceed the duration of any
768 franchise agreement and is deemed sufficient to satisfy the
769 public utility's or other provider's need for an ownership
770 interest to allow it adequate access to the underground
771 facilities to operate and maintain the systems. If the public
772 utility or other provider and the community development district
773 are unable to agree on this matter, the community development
774 district, in its sole discretion, shall determine which of the
775 ownership structures shall apply.

776 Section 16. Section 190.019, Florida Statutes, is created
777 to read:

778 189.019 Terms for which a utility franchise may be
779 granted; conditions.--

780 (1)(a) A community development district may not give or
781 grant any franchise or right to use a street for operating along
782 or across the street a street railroad, water works, telephone,
783 cable television, gas or electric business, or other business
784 requiring the use of mains, pipes, wires, or similar facilities

785 in any street for a term exceeding 30 years. At the sole option
786 and discretion of the community development district, a
787 community development district that is negotiating for a new
788 franchise, or in which a renewal franchise agreement is being
789 negotiated as the current franchise is about to expire or has
790 expired, may require that any new franchise agreement be for a
791 period of 5 years.

792 (b) If the entity with whom the community development
793 district is negotiating refuses or delays in negotiating a
794 franchise term of 5 years, or longer at the community
795 development district's option, the district may file a civil
796 action in circuit court for a declaratory judgment, reformation,
797 or injunctive relief, or any such other relief as the court
798 finds appropriate, requiring that the franchise term be set at 5
799 years or such longer term as prayed by the community development
800 district. If the district is successful, the entity with whom
801 the community development district is negotiating is liable to
802 the community development district for all of the district's
803 reasonable attorney's fees and costs of bringing the action.

804 (2) A community development district may not give or grant
805 any franchise governed by this section without reserving to the
806 district the right to purchase the street railroad, water works,
807 telephone, cable television, gas or electric business, or other
808 business at the expiration of the franchise. The right of
809 reservation includes all related property used under or in
810 connection with the franchise or right, or any such part of the
811 property which the community development district may desire to
812 purchase. The value of the franchise property, real and

813 personal, desired by the district shall be fixed by arbitration
 814 as may be provided by law.

815 (3) A franchise may not be granted which contains or
 816 includes a provision that prohibits a community development
 817 district from competing with any street railroad, water works,
 818 telephone, cable television, gas or electric business, or other
 819 similar business obtaining a franchise from the district for a
 820 period longer than 5 years.

821 (4) Any franchise or right granted for a period longer
 822 than 30 years, granted without the right to purchase the
 823 franchise as set forth in this section, or including a provision
 824 intended to limit competition with the community development
 825 district for a period longer than 5 years, is void.

826 Notwithstanding the voiding of any such franchise, the entity to
 827 whom the franchise had been granted shall continue to be liable
 828 to pay any applicable franchise fees, which would otherwise have
 829 been due under the franchise, to the community development
 830 district for so long as the entity continues to operate and
 831 conduct its business in the community development district.

832 Section 17. Subsection (4) is added to section 364.03,
 833 Florida Statutes, to read:

834 364.03 Rates to be reasonable; performance of service;
 835 maintenance of telecommunications facilities.--

836 (4) The reliability of telecommunications service is
 837 critical to the public health, safety, and welfare, and
 838 minimizing the severity, extent, and duration of outages of
 839 telecommunications service is likewise critical to the public
 840 health, safety, and welfare. Accordingly, the Legislature

841 directs the commission and the entities that provide such
842 service in this state to consistently and continuously seek,
843 promote, and encourage all reasonable means of enhancing and
844 maximizing the reliability of the telecommunications system.
845 Further, the Legislature directs the commission and all such
846 entities in this state to aggressively promote and encourage the
847 installation of underground facilities, where applicable and to
848 the maximum extent feasible, and to aggressively promote and
849 encourage the timely and orderly conversion of existing overhead
850 facilities to underground facilities. Consistent with the
851 Florida Reliable Electricity Enhancement Act, ss. 366.201-
852 366.208, effective January 1, 2007, it is presumed that
853 underground service constitutes the standard for new
854 telecommunication service in this state and that underground
855 service shall constitute modern, adequate, sufficient, and
856 efficient service within the meaning of this section. The
857 commission shall adopt rules to the extent of its jurisdiction
858 encouraging and promoting, to the maximum extent feasible, the
859 conversion of existing overhead facilities to underground
860 facilities on a priority basis, in coordination with any
861 conversion of electric facilities to underground service, giving
862 due consideration to the overall cost of vehicular accidents
863 involving poles and other overhead facilities, as well as to
864 corresponding facilities that provide underground service, the
865 costs associated with rights-of-way and easements, the total
866 operating and maintenance costs, including, without limitation,
867 costs of tree-trimming for overhead facilities, the total costs
868 incurred and losses sustained by consumers as a result of

869 outages due to storm damage, and the costs of associated
870 insurance, attorney's fees, and legal settlement and costs.

871 Section 18. Paragraph (e) of subsection (2) of section
872 366.04, Florida Statutes, is amended to read:

873 366.04 Jurisdiction of commission.--

874 (2) In the exercise of its jurisdiction, the commission
875 shall have power over electric utilities for the following
876 purposes:

877 (e) To resolve, upon petition of a utility or on its own
878 motion, any territorial dispute involving service areas between
879 and among rural electric cooperatives, municipal electric
880 utilities, and other electric utilities under its jurisdiction.
881 In resolving territorial disputes, the commission may consider,
882 but not be limited to consideration of, the ability of the
883 utilities to expand services within their own capabilities and
884 the nature of the area involved, including population, the
885 degree of urbanization of the area, its proximity to other urban
886 areas, and the present and reasonably foreseeable future
887 requirements of the area for other utility services. The
888 Legislature finds and declares that the installation of
889 underground electric distribution facilities to replace existing
890 overhead facilities is in the public interest and that such
891 installation is not a duplication of existing overhead
892 facilities. Any governmental entity that installs underground
893 electric distribution facilities to provide service within its
894 geographic jurisdiction, and subsequently, without violating any
895 then-effective franchise agreement, establishes a governmentally
896 owned electric utility system and begins operating such system,

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897 is not subject to the jurisdiction of the commission over
898 territorial disputes.

899 Section 19. This act shall take effect July 1, 2006.