

1 366.208, F.S.; encouraging competition in
2 providing utility construction services;
3 creating ss. 125.3402, 166.261, 189.4052, and
4 190.018, F.S.; declaring that it is the policy
5 of the state that counties, municipalities,
6 special districts, and community development
7 districts convert electric distribution,
8 telephone, and cable television facilities from
9 overhead systems to underground facilities;
10 providing that if a county, municipality,
11 special district, or community development
12 district pays for part or all of the cost of
13 converting overhead facilities to underground
14 facilities, it must receive fair credit for the
15 payments if and when the entity elects to
16 establish an electric utility, telephone, or
17 cable television system; creating ss. 125.3403,
18 166.262, 189.4053, and 190.019, F.S.; providing
19 the contractual terms that must be included in
20 a utility franchise; prohibiting a governmental
21 entity from giving or granting a franchise
22 without reserving to the governmental entity
23 the right to purchase the utility at the
24 expiration of the franchise; providing that the
25 utility franchise is void under certain
26 circumstances; amending s. 364.03, F.S.;
27 directing the commission and the entities that
28 provide service in this state to consistently
29 and continuously promote and encourage all
30 reasonable means to enhance the reliability of
31 the telecommunications system in the state;

1 amending s. 366.04, F.S.; declaring that the
2 installation of underground electric
3 distribution facilities to replace existing
4 overhead facilities is in the public interest
5 in the state; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Section 366.201, Florida Statutes, is
10 created to read:

11 366.201 Short title.--Sections 366.201-366.208 may be
12 cited as the "Reliable Electricity Enhancement Act."

13 Section 2. Section 366.202, Florida Statutes, is
14 created to read:

15 366.202 Legislative findings and intent.--

16 (1) The Legislature finds that:

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

20 (b) More than one-third of all electric distribution
21 facilities currently in service in this state are underground
22 facilities, and that approximately one-half of all customers
23 served by public utilities are served from underground
24 facilities;

25 (c) Underground distribution service is the preferred
26 standard of service in this state and that underground service
27 is, in fact, becoming the general standard of service for
28 public utilities;

29 (d) Many reports indicate that areas served by
30 underground distribution facilities had less severe and less
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1 prolonged losses of electric service during the hurricanes
2 that struck the state in 2004 and 2005; and

3 (e) A significant number of meteorological experts are
4 predicting that more hurricanes are likely to strike the state
5 with significantly greater frequency over the foreseeable
6 future than the state experienced in the 50-year period before
7 2004.

8 (2) The Legislature further finds that reliability of
9 electric service is critical to the public health, safety, and
10 welfare of the residents of the state, and that minimizing the
11 severity, extent, and duration of outages of electric service
12 is likewise critical to the health, safety, and welfare.

13 Accordingly, the Legislature directs the Public Service
14 Commission and the public utilities that provide service in
15 this state to consistently and continuously seek, promote, and
16 encourage all reasonable means of enhancing and maximizing the
17 reliability of the electric supply system, including
18 distribution systems as well as transmission and generation
19 systems. Further, the Legislature directs the commission and
20 all public utilities to aggressively promote and encourage the
21 installation of underground distribution facilities to the
22 maximum extent feasible, and to aggressively promote and
23 encourage the timely and orderly conversion of existing
24 overhead facilities to underground facilities.

25 (3) The mandatory provisions of ss. 366.201-366.208
26 apply only to public utilities as defined in s. 366.02.
27 Municipal and cooperative utilities providing electric service
28 in the state are encouraged to seek and implement all
29 reasonable means of enhancing electric service reliability in
30 the state, and to install underground electric distribution
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1 facilities to the maximum extent feasible, giving due
2 consideration to the unique circumstances of each utility.

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

5 366.203 Standard of service.--

6 (1) Effective January 1, 2007, underground electric
7 distribution is presumed to constitute the standard for new
8 electric distribution service in this state. This presumption
9 is rebuttable in specific cases if, in proceedings before the
10 commission, a clear and convincing showing is made that, in a
11 particular application, underground electric distribution is
12 less desirable than overhead facilities. To rebut the
13 presumption, the commission must consider the relevant
14 factors, including the relative reliability of underground
15 compared to overhead systems in the particular application,
16 the installation costs for underground and overhead
17 facilities, the operating and maintenance costs for overhead
18 and underground facilities, and any other identifiable costs
19 associated with overhead and underground facilities. The
20 commission must also consider, without limitation:

21 (a) The overall cost of accidental electrocutions and
22 temporary and permanent disabilities to utility employees and
23 the public;

24 (b) The overall cost of vehicular accidents involving
25 distribution facilities;

26 (c) Ascertainable and measurable costs of adverse
27 health effects;

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

30 (e) The total operating and maintenance costs,
31 including costs of tree trimming for overhead facilities;

1 (f) The total costs incurred and losses sustained by
2 utility customers as a result of outages due to storm damage;
3 and

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

6
7 In any proceedings before the commission, the commission shall
8 specifically include, as an estimated cost of the overhead
9 facilities being considered, the costs of having to remove and
10 replace a new overhead system due to storm damage at least
11 once during its projected useful life.

12 (2) Effective July 1, 2006, all public utilities are
13 directed to aggressively seek, promote, and encourage the
14 timely and orderly conversion of existing overhead
15 distribution facilities to underground facilities, so that the
16 majority of persons served by public utilities will come to
17 enjoy the reliability benefits of underground distribution
18 service. Specifically, it is the intent of the Legislature
19 that, to the maximum extent feasible, existing overhead
20 facilities be converted to underground systems in a timely and
21 orderly way, with preference and priority given to overhead
22 facilities and systems that are being relocated due to
23 road-widening or other similar activities, and to overhead
24 systems that are at or near the end of their useful lives.

25 (3) The commission shall adopt rules to encourage and
26 promote, to the maximum extent feasible, the conversion of
27 existing overhead systems to underground facilities in a
28 timely and orderly manner giving due consideration to the
29 factors deemed relevant by the commission and consistent with
30 the public interest, including:

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1 (a) The overall cost of accidental electrocutions and
2 temporary and permanent disabilities to both utility employees
3 and others;

4 (b) The overall cost of vehicular accidents involving
5 distribution facilities;

6 (c) Ascertainable and measurable costs of adverse
7 health effects;

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

10 (e) The total operating and maintenance costs,
11 including, without limitation, costs of tree trimming for
12 overhead facilities;

13 (f) The total costs incurred and losses sustained by
14 utility customers as a result of outages due to storm damage;
15 and

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

18 Section 4. Section 366.204, Florida Statutes, is
19 created to read:

20 366.204 Duties of public utilities.--

21 (1) In addition to the general duties set forth in s.
22 366.03, each public utility shall:

23 (a) Maintain adequate and accurate records and data
24 regarding the relative reliability of overhead and underground
25 facilities, including the number, frequency, and duration of
26 all outages on the distribution system; whether each outage
27 was the result of an event directly affecting overhead or
28 underground facilities; and any other information that the
29 commission may prescribe by rule to be maintained.

30 (b) At least once every 2 years, prepare a
31 comprehensive and detailed report concerning the relative

1 reliability of overhead and underground systems, including
2 summaries of the number, frequency, and duration of all
3 outages on the distribution system and the causes of the
4 outages; whether the outages resulted from events directly
5 affecting overhead or underground facilities; and any other
6 information that the commission may prescribe by rule as
7 appropriate for inclusion in the reports.

8 (c) Maintain accurate records regarding the costs of
9 installing, maintaining, and operating overhead and
10 underground systems and facilities, such that the original
11 cost, approximate depreciated value, and operating and
12 maintenance costs of underground and overhead facilities, and
13 also the removal cost of overhead facilities, can be readily
14 compiled and calculated separately and comparably for overhead
15 and underground facilities.

16 (d) Timely prepare and provide, at the request of any
17 local governmental unit, a report concerning the relative
18 reliability of the electric distribution systems providing
19 service within the geographic jurisdiction of the governmental
20 unit, at no cost to the governmental unit.

21 (e) Timely prepare and provide, at the request of any
22 local governmental unit, a report showing in reasonable and
23 understandable detail the estimated original cost, approximate
24 depreciated value, and operating and maintenance costs of
25 underground and overhead facilities, and also the removal cost
26 of overhead facilities, at no cost to the governmental unit.

27 (f) Work cooperatively, proactively, promptly,
28 diligently, and in good faith with any local governmental unit
29 or homeowners' association that wishes to participate in
30 converting existing overhead systems to underground
31 facilities.

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

3 (a) The damage to overhead and underground facilities
4 on each public utility's distribution system caused by the
5 hurricanes that struck the state in 2004 and 2005, in order
6 that the extent and cost of damage to overhead and underground
7 facilities can be readily and fairly compared; and

8 (b) The outages sustained by each public utility's
9 customers due to damage to the utility's distribution systems
10 caused by the hurricanes that struck the state in 2004 and
11 2005, in order that the causes of the outages, the points on
12 the distribution system at which the outages originated, and
13 the duration of the outages can be readily and fairly compared
14 as between overhead and underground facilities.

15 (3) A public utility may not willfully discourage or
16 fail to seek, promote, and encourage the installation of new
17 underground utility facilities or the conversion of existing
18 overhead systems to underground systems. Any public utility
19 that violates this subsection is subject to the penalties set
20 forth in s. 350.127.

21 Section 5. Section 366.205, Florida Statutes, is
22 created to read:

23 366.205 Limitation on inclusion of general and
24 indirect costs in determining costs or payments for
25 underground facilities.--In any proceedings in which the cost
26 of, or payment for, underground facilities is at issue, the
27 commission shall ensure that only the minimum reasonable
28 general and indirect costs associated with underground
29 facilities, whether such facilities are contemplated or have
30 been installed, are included as costs of the underground
31 facilities for any purpose. This section shall be strictly

1 construed to ensure that no general or indirect costs are
2 assigned or allocated to underground facilities, or accounted
3 for in such a way as to provide a disincentive to the
4 installation of underground facilities, unless the general or
5 indirect costs are properly attributable to the costs of
6 underground facilities.

7 Section 6. Section 366.206, Florida Statutes, is
8 created to read:

9 366.206 Rights-of-way; easements.--

10 (1) The use of rights-of-way for the location of
11 underground facilities is encouraged to the maximum extent
12 feasible, consistent with safety and cost considerations. It
13 is presumed, subject to a rebuttal by clear and convincing
14 evidence in a specific proceeding before the commission, that
15 rights-of-way are sufficient for the location of underground
16 facilities. If a municipality, county, special district, or
17 other governmental entity agrees to be responsible for the
18 costs associated with a future relocation of facilities
19 located within the governmental entity's rights-of-way, the
20 issue of future relocation costs to the public utility is
21 irrelevant when determining whether the governmental entity's
22 right-of-way is sufficient for the location of underground
23 facilities or if an easement is required for the facilities.

24 (2) All easements granted to public utilities on or
25 after July 1, 2006, must state that all permanent rights
26 granted by the easement vest in the governmental entity in
27 whose geographic jurisdiction the easement exists, with the
28 public utility having the rights that are granted by the
29 easement only for so long as it holds a franchise to provide
30 service within the governmental entity's jurisdiction. Each
31 easement must provide specifically that the easement, and the

1 rights thereunder, transfer automatically, by operation of the
2 provisions of the easement itself, to the respective
3 governmental entity upon termination or expiration of any
4 franchise granted to the public utility, or upon the
5 governmental entity's establishing an electric utility system
6 to serve within any part, or all, of its geographic
7 jurisdiction.

8 Section 7. Section 366.207, Florida Statutes, is
9 created to read:

10 366.207 Use of rear yard easements encouraged.--If
11 existing overhead facilities are located within rear yard
12 easements, using rear yard easements for the installation of
13 new underground facilities is encouraged. The utility may
14 require that the easements be kept clear of obstructions in
15 order to ensure access to the underground facilities.

16 Section 8. Section 366.208, Florida Statutes, is
17 created to read:

18 366.208 Encouraging competition in providing utility
19 construction services.--It is the policy of the state to
20 promote, to the maximum extent feasible and practicable,
21 competition in all economic activity in the state, including
22 the provision of utility construction services. Public
23 utilities shall pursue competitive alternatives from qualified
24 vendors and make such alternatives available to governmental
25 entities that desire to convert existing overhead facilities
26 to underground facilities.

27 Section 9. Section 125.3402, Florida Statutes, is
28 created to read:

29 125.3402 Credits to counties for contributions paid
30 toward the cost of underground distribution facilities.--
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1 (1) It is the policy of the state to encourage
2 counties to convert electric distribution, telephone, and
3 cable television facilities providing service within their
4 geographic jurisdictions from overhead systems to underground
5 facilities in order to secure for their residents the benefits
6 of such underground facilities and systems. It is further the
7 policy of the state to ensure that, if a county pays for part
8 or all of the cost of converting overhead facilities to
9 underground facilities, it receive fair credit for such
10 payments if and when the county elects to establish a
11 county-owned electric utility, telephone, or cable television
12 systems.

13 (2) If a county has paid a differential cost
14 reflecting the difference in cost between the cost of the
15 underground facilities installed and the cost of equivalent
16 new overhead facilities for the installation of new
17 underground facilities, and the county subsequently decides to
18 purchase the public utility's or other provider's facilities
19 as part of establishing a county-owned electric utility,
20 telephone, or cable television system, whether under eminent
21 domain or other proceedings, at the county's option:

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

25 (b) The county shall have the right to purchase the
26 underground system by paying the public utility or other
27 provider the difference between the cost of the new
28 underground system installed and the payment that the county
29 made.

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1 In order for a county to receive fair credit for the value
2 that it contributed to convert overhead facilities to
3 underground facilities, this section applies to payments made
4 by the county before or after July 1, 2006. This section
5 applies whether the county paid the public utility or other
6 provider to install the new underground facilities or engaged
7 a private contractor to install the underground facilities and
8 received a credit from the public utility or other provider.

9 (3) If a county pays the full cost of installing new
10 underground facilities without any credit from the public
11 utility or other provider for the cost of an equivalent new
12 overhead facility, the county has a vested fee simple
13 ownership right in the underground facilities along with any
14 easements and easement rights associated with the underground
15 facilities. However, the public utility or other provider
16 retains sufficient rights of access in order to operate and
17 maintain the underground facilities under the terms and
18 conditions agreed upon by the county and the public utility or
19 other provider. When considering such terms and conditions,
20 the Legislature finds and states that a leasehold interest of
21 the public utility, at an annual lease payment of \$1 per year
22 for all facilities and property, including any applicable
23 easement rights, located within the county's geographic area
24 is sufficient for this purpose. The Legislature further finds
25 and declares that, alternatively, the public utility or other
26 provider has a vested time-limited ownership interest with the
27 fee simple title remaining vested in the county. This interest
28 may not exceed the duration of any franchise agreement and is
29 deemed sufficient to satisfy the public utility's or other
30 provider's need for an ownership interest to allow it adequate
31 access to the underground facilities in order to operate and

1 maintain the systems. If the public utility or other provider
2 and the county are unable to agree on this matter, the county,
3 in its sole discretion, shall determine which of the ownership
4 structures shall apply.

5 Section 10. Section 125.3403, Florida Statutes, is
6 created to read:

7 125.3403 Terms for which a utility franchise may be
8 granted; conditions.--

9 (1)(a) A county may not give or grant any franchise or
10 right to use a street for operating along or across the street
11 a street railroad, water works, telephone, cable television,
12 gas or electric business, or other business requiring the use
13 of mains, pipes, wires, or similar facilities in any street
14 for a term exceeding 30 years. At the sole option and
15 discretion of the county, any county that is negotiating for a
16 new franchise, or in which a renewal franchise agreement is
17 being negotiated as the current franchise is about to expire
18 or has expired, may require that any new franchise agreement
19 be for a period of 5 years.

20 (b) If the entity with whom the county is negotiating
21 refuses or delays in negotiating a franchise term of 5 years,
22 or longer at the county's option, the county may file a civil
23 action in circuit court for a declaratory judgment,
24 reformation, or injunctive relief, or any such other relief as
25 the court finds appropriate, requiring that the franchise term
26 be set at 5 years or such longer term as prayed by the county.
27 If the county is successful, the entity with whom the county
28 is negotiating is liable to the county for all of the county's
29 reasonable attorney's fees and costs of bringing the action.

30 (2) A county may not give or grant any franchise
31 governed by this section without reserving to the county the

1 right to purchase the street railroad, water works, telephone,
2 cable television, gas or electric business, or other business
3 at the expiration of the franchise. The right of reservation
4 includes all related property used under or in connection with
5 the franchise or right, or any such part of the property which
6 the county may desire to purchase. The value of the franchise
7 property, real and personal, desired by the county shall be
8 fixed by arbitration as may be provided by law.

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

15 (4) Any franchise or right granted for a period longer
16 than 30 years, granted without the right to purchase the
17 franchise as set forth in this section, or including a
18 provision intended to limit competition with the county for a
19 period longer than 5 years, is void. Notwithstanding the
20 voiding of any such franchise, the entity to whom the
21 franchise had been granted shall continue to be liable to pay
22 any applicable franchise fees, which would otherwise have been
23 due under the franchise, to the county for so long as the
24 entity continues to operate and conduct its business in the
25 county.

26 Section 11. Section 166.261, Florida Statutes, is
27 created to read:

28 166.261 Credits to municipalities for contributions
29 paid toward the cost of underground distribution facilities.--

30 (1) It is the policy of the state to encourage
31 municipalities to convert electric distribution, telephone,

1 and cable television facilities providing service within their
2 geographic jurisdictions from overhead systems to underground
3 facilities in order to secure for their residents the benefits
4 of such underground facilities and systems. It is further the
5 policy of the state to ensure that, if a municipality pays for
6 part or all of the cost of converting overhead facilities to
7 underground facilities, it receive fair credit for such
8 payments if and when the municipality elects to establish a
9 municipality-owned electric utility, telephone, or cable
10 television systems.

11 (2) If a municipality, corporate entity, individual
12 citizen, or group of citizens, including, without limitation,
13 a civic association, neighborhood association, homeowners'
14 association, or similar group, has paid a differential cost
15 reflecting the difference in cost between the cost of the
16 underground facilities installed and the cost of equivalent
17 new overhead facilities for the installation of new
18 underground facilities, and the municipality subsequently
19 decides to purchase the public utility's or other provider's
20 facilities as part of establishing a municipality-owned
21 electric utility, telephone, or cable television system,
22 whether under eminent domain or other proceedings, at the
23 municipality's option:

24 (a) In any proceedings to determine the purchase price
25 for the facilities being purchased, the municipality shall
26 receive full credit for such differential payments made,
27 whether by the municipality, a corporate entity, an individual
28 citizen, or a group of citizens; or

29 (b) The municipality shall have the right to purchase
30 the underground system by paying the public utility or other
31 provider the difference between the cost of the new

1 underground system installed and the payment that the
2 municipality or others made.

3
4 In order for a municipality and its citizens to receive fair
5 credit for the value that they contributed to convert overhead
6 facilities to underground facilities, this section applies to
7 payments made by the municipality or its citizens before and
8 after July 1, 2006. This section applies whether the
9 municipality paid the public utility or other provider to
10 install the new underground facilities or engaged a private
11 contractor to install the underground facilities and received
12 a credit from the public utility or other provider.

13 (3) If the full cost of installing new underground
14 facilities is paid by a municipality or its citizens without
15 any credit from the public utility or other provider for the
16 cost of an equivalent new overhead facility, the municipality
17 has a vested fee simple ownership right in the underground
18 facilities along with any easements and easement rights
19 associated with the underground facilities. However, the
20 public utility or other provider retains sufficient rights of
21 access in order to operate and maintain the underground
22 facilities under the terms and conditions agreed upon by the
23 municipality and the public utility or other provider. When
24 considering such terms and conditions, the Legislature finds
25 and states that a leasehold interest of the public utility, at
26 an annual lease payment of \$1 per year for all facilities and
27 property, including any applicable easement rights, located
28 within the municipality's geographic area is sufficient for
29 this purpose. The Legislature further finds and declares that,
30 alternatively, the public utility or other provider has a
31 vested time-limited ownership interest with the fee simple

1 title remaining vested in the municipality. This interest may
2 not exceed the duration of any franchise agreement and is
3 deemed sufficient to satisfy the public utility's or other
4 provider's need for an ownership interest to allow it adequate
5 access to the underground facilities in order to operate and
6 maintain the systems. If the public utility or other provider
7 and the municipality are unable to agree on this matter, the
8 municipality, in its sole discretion, shall determine which of
9 the ownership structures shall apply.

10 Section 12. Section 166.262, Florida Statutes, is
11 created to read:

12 166.262 Terms for which a utility franchise may be
13 granted; conditions.--

14 (1)(a) A municipality may not give or grant any
15 franchise or right to use a street for operating along or
16 across the street a street railroad, water works, telephone,
17 cable television, gas or electric business, or other business
18 requiring the use of mains, pipes, wires, or similar
19 facilities in any street for a term exceeding 30 years. At the
20 sole option and discretion of the municipality, a municipality
21 that is negotiating for a new franchise, or in which a renewal
22 franchise agreement is being negotiated as the current
23 franchise is about to expire or has expired, may require that
24 any new franchise agreement be for a period of 5 years.

25 (b) If the entity with whom the municipality is
26 negotiating refuses or delays in negotiating a franchise term
27 of 5 years, or longer at the municipality's option, the
28 municipality may file a civil action in circuit court for a
29 declaratory judgment, reformation, or injunctive relief, or
30 any such other relief as the court finds appropriate,
31 requiring that the franchise term be set at 5 years or such

1 longer term as prayed by the municipality. If the municipality
2 is successful, the entity with whom the municipality is
3 negotiating is liable to the municipality for all of the
4 municipality's reasonable attorney's fees and costs of
5 bringing the action.

6 (2) A municipality may not give or grant any franchise
7 governed by this section without reserving to the municipality
8 the right to purchase the street railroad, water works,
9 telephone, cable television, gas or electric business, or
10 other business at the expiration of the franchise. The right
11 of reservation includes all related property used under or in
12 connection with the franchise or right, or any such part of
13 the property which the municipality may desire to purchase.
14 The value of the franchise property, real and personal,
15 desired by the municipality shall be fixed by arbitration as
16 may be provided by law.

17 (3) A franchise may not be granted which contains or
18 includes a provision that prohibits a municipality from
19 competing with any street railroad, water works, telephone,
20 cable television, gas or electric business, or other similar
21 business obtaining a franchise from the municipality for a
22 period longer than 5 years.

23 (4) Any franchise or right granted for a period longer
24 than 30 years, granted without the right to purchase the
25 franchise as set forth in this section, or including a
26 provision intended to limit competition with the municipality
27 for a period longer than 5 years, is void. Notwithstanding the
28 voiding of any such franchise, the entity to whom the
29 franchise had been granted shall continue to be liable to pay
30 any applicable franchise fees, which would otherwise have been
31 due under the franchise, to the municipality for so long as

1 the entity continues to operate and conduct its business in
2 the municipality.

3 Section 13. Section 189.4052, Florida Statutes, is
4 created to read:

5 189.4052 Credits to special districts for
6 contributions paid toward the cost of underground distribution
7 facilities.--

8 (1) It is the policy of the state to encourage special
9 districts to convert electric distribution, telephone, and
10 cable television facilities providing service within their
11 geographic jurisdictions from overhead systems to underground
12 facilities in order to secure for their residents the benefits
13 of such underground facilities and systems. It is further the
14 policy of the state to ensure that, if a special district pays
15 for part or all of the cost of converting overhead facilities
16 to underground facilities, the special district receives fair
17 credit for such payments if and when the special district
18 elects to establish a special district-owned electric utility,
19 telephone, or cable television systems.

20 (2) If a special district has paid a differential cost
21 reflecting the difference in cost between the cost of the
22 underground facilities installed and the cost of equivalent
23 new overhead facilities for the installation of new
24 underground facilities, and the special district subsequently
25 decides to purchase the public utility's or other provider's
26 facilities as part of establishing a special district-owned
27 electric utility, telephone, or cable television system,
28 whether under eminent domain or other proceedings, at the
29 special district's option:

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

4 (b) The special district has the right to purchase the
5 underground system by paying the public utility or other
6 provider the difference between the cost of the new
7 underground system installed and the payment that the special
8 district made.

9
10 In order for a special district to receive fair credit for the
11 value that it contributed to convert overhead facilities to
12 underground facilities, this section applies to payments made
13 by the special district before and after July 1, 2006. This
14 section applies whether the special district paid the public
15 utility or other provider to install the new underground
16 facilities or engaged a private contractor to install the
17 underground facilities and received a credit from the public
18 utility or other provider.

19 (3) If a special district pays the full cost of
20 installing new underground facilities without any credit from
21 the public utility or other provider for the cost of an
22 equivalent new overhead facility, it has a vested fee simple
23 ownership right in the underground facilities along with any
24 easements and easement rights associated with the underground
25 facilities. However, the public utility or other provider
26 retains sufficient rights of access in order to operate and
27 maintain the underground facilities under the terms and
28 conditions agreed upon by the special district and the public
29 utility or other provider. When considering such terms and
30 conditions, the Legislature finds and states that a leasehold
31 interest of the public utility, at an annual lease payment of

1 \$1 per year for all facilities and property, including any
2 applicable easement rights, located within the special
3 district's geographic area is sufficient for this purpose. The
4 Legislature further finds and declares that, alternatively,
5 the public utility or other provider has a vested time-limited
6 ownership interest with the fee simple title remaining vested
7 in the special district. This interest may not exceed the
8 duration of any franchise agreement and is deemed sufficient
9 to satisfy the public utility's or other provider's need for
10 an ownership interest to allow it adequate access to the
11 underground facilities in order to operate and maintain the
12 systems. If the public utility or other provider and the
13 special district are unable to agree on this matter, the
14 special district, in its sole discretion, shall determine
15 which of the ownership structures shall apply.

16 Section 14. Section 189.4053, Florida Statutes, is
17 created to read:

18 189.4053 Terms for which a utility franchise may be
19 granted; conditions.--

20 (1)(a) Special districts created under this chapter
21 shall have, to the extent allowed by law, the power to grant
22 franchises to entities that wish to operate a street railroad,
23 water works, telephone, cable television, gas or electric
24 business, or other business requiring the use of mains, pipes,
25 wires, or similar facilities in any street in the district.
26 However, a special district may not give or grant any
27 franchise or right to use a street for operating along or
28 across the street a street railroad, water works, telephone,
29 cable television, gas or electric business, or other business
30 requiring the use of mains, pipes, wires, or similar
31 facilities in any street for a term exceeding 30 years. At the

1 sole option and discretion of the special district, a special
2 district that is negotiating for a new franchise, or in which
3 a renewal franchise agreement is being negotiated as the
4 current franchise is about to expire or has expired, may
5 require that any new franchise agreement be for a period of 5
6 years.

7 **(b)** If the entity with whom the special district is
8 negotiating refuses or delays in negotiating a franchise term
9 of 5 years, or longer at the special district's option, the
10 special district may file a civil action in circuit court for
11 a declaratory judgment, reformation, or injunctive relief, or
12 any such other relief as the court finds appropriate,
13 requiring that the franchise term be set at 5 years or such
14 longer term as prayed by the special district. If the special
15 district is successful, the entity with whom the special
16 district is negotiating is liable to the special district for
17 all of the special district's reasonable attorney's fees and
18 costs of bringing the action.

19 **(2)** A special district may not give or grant any
20 franchise governed by this section without reserving to the
21 special district the right to purchase the street railroad,
22 water works, telephone, cable television, gas or electric
23 business, or other business at the expiration of the
24 franchise. The right of reservation includes all related
25 property used under or in connection with the franchise or
26 right, or any such part of the property which the special
27 district may desire to purchase. The value of the franchise
28 property, real and personal, desired by the special district
29 shall be fixed by arbitration as may be provided by law.

30 **(3)** A franchise may not be granted which contains or
31 includes a provision that prohibits a special district from

1 competing with any street railroad, water works, telephone,
2 cable television, gas or electric business, or other similar
3 business obtaining a franchise from the special district for a
4 period longer than 5 years.

5 (4) Any franchise or right granted for a period longer
6 than 30 years, granted without the right to purchase the
7 franchise as set forth in this section, or including a
8 provision intended to limit competition with the special
9 district for a period longer than 5 years, is void.

10 Notwithstanding the voiding of any such franchise, the entity
11 to whom the franchise had been granted shall continue to be
12 liable to pay any applicable franchise fees, which would
13 otherwise have been due under the franchise, to the special
14 district for so long as the entity continues to operate and
15 conduct its business in the special district.

16 Section 15. Section 190.018, Florida Statutes, is
17 created to read:

18 190.018 Credits to community development districts for
19 contributions paid toward the cost of underground distribution
20 facilities.--

21 (1) It is the policy of the state to encourage
22 community development districts to convert electric
23 distribution, telephone, and cable television facilities
24 providing service within their geographic jurisdictions from
25 overhead systems to underground facilities in order to secure
26 for their residents the benefits of such underground
27 facilities and systems. It is further the policy of the state
28 to ensure that, if a community development district pays for
29 part or all of the cost of converting overhead facilities to
30 underground facilities, the community development district
31 receives fair credit for such payments if and when the

1 community development district elects to establish a community
2 development district-owned electric utility, telephone, or
3 cable television system.

4 (2) If a community development district has paid a
5 differential cost reflecting the difference in cost between
6 the cost of the underground facilities installed and the cost
7 of equivalent new overhead facilities for the installation of
8 new underground facilities, and the community development
9 district subsequently decides to purchase the public utility's
10 or other provider's facilities as part of establishing a
11 community development district-owned electric utility,
12 telephone, or cable television system, whether under eminent
13 domain or other proceedings, at the community development
14 district's option:

15 (a) In any proceedings to determine the purchase price
16 for the facilities being purchased, the community development
17 district shall receive full credit for the differential
18 payments made; or

19 (b) The community development district has the right
20 to purchase the underground system by paying the public
21 utility or other provider the difference between the cost of
22 the new underground system installed and the payment that the
23 district made.

24
25 In order for a community development district to receive fair
26 credit for the value that it contributed to convert overhead
27 facilities to underground facilities, this section applies to
28 payments made by the community development district before and
29 after July 1, 2006. This section applies whether the community
30 development district paid the public utility or other provider
31 to install the new underground facilities or engaged a private

1 contractor to install the underground facilities and received
2 a credit from the public utility or other provider.

3 (3) If a community development district pays the full
4 cost of installing new underground facilities without any
5 credit from the public utility or other provider for the cost
6 of an equivalent new overhead facility, the community
7 development district has a vested fee simple ownership right
8 in the underground facilities along with any easements and
9 easement rights associated with the underground facilities.

10 However, the public utility or other provider retains
11 sufficient rights of access in order to operate and maintain
12 the underground facilities under the terms and conditions
13 agreed upon by the community development district and the
14 public utility or other provider. When considering such terms
15 and conditions, the Legislature finds and states that a
16 leasehold interest of the public utility, at an annual lease
17 payment of \$1 per year for all facilities and property,
18 including any applicable easement rights, located within the
19 community development district's geographic area is sufficient
20 for this purpose. The Legislature further finds and declares
21 that, alternatively, the public utility or other provider has
22 a vested time-limited ownership interest with the fee simple
23 title remaining vested in the district. This interest may not
24 exceed the duration of any franchise agreement and is deemed
25 sufficient to satisfy the public utility's or other provider's
26 need for an ownership interest to allow it adequate access to
27 the underground facilities to operate and maintain the
28 systems. If the public utility or other provider and the
29 community development district are unable to agree on this
30 matter, the community development district, in its sole

31

1 discretion, shall determine which of the ownership structures
2 shall apply.

3 Section 16. Section 190.019, Florida Statutes, is
4 created to read:

5 189.019 Terms for which a utility franchise may be
6 granted; conditions.--

7 (1)(a) A community development district may not give
8 or grant any franchise or right to use a street for operating
9 along or across the street a street railroad, water works,
10 telephone, cable television, gas or electric business, or
11 other business requiring the use of mains, pipes, wires, or
12 similar facilities in any street for a term exceeding 30
13 years. At the sole option and discretion of the community
14 development district, a community development district that is
15 negotiating for a new franchise, or in which a renewal
16 franchise agreement is being negotiated as the current
17 franchise is about to expire or has expired, may require that
18 any new franchise agreement be for a period of 5 years.

19 (b) If the entity with whom the community development
20 district is negotiating refuses or delays in negotiating a
21 franchise term of 5 years, or longer at the community
22 development district's option, the district may file a civil
23 action in circuit court for a declaratory judgment,
24 reformation, or injunctive relief, or any such other relief as
25 the court finds appropriate, requiring that the franchise term
26 be set at 5 years or such longer term as prayed by the
27 community development district. If the district is successful,
28 the entity with whom the community development district is
29 negotiating is liable to the community development district
30 for all of the district's reasonable attorney's fees and costs
31 of bringing the action.

1 (2) A community development district may not give or
2 grant any franchise governed by this section without reserving
3 to the district the right to purchase the street railroad,
4 water works, telephone, cable television, gas or electric
5 business, or other business at the expiration of the
6 franchise. The right of reservation includes all related
7 property used under or in connection with the franchise or
8 right, or any such part of the property which the community
9 development district may desire to purchase. The value of the
10 franchise property, real and personal, desired by the district
11 shall be fixed by arbitration as may be provided by law.

12 (3) A franchise may not be granted which contains or
13 includes a provision that prohibits a community development
14 district from competing with any street railroad, water works,
15 telephone, cable television, gas or electric business, or
16 other similar business obtaining a franchise from the district
17 for a period longer than 5 years.

18 (4) Any franchise or right granted for a period longer
19 than 30 years, granted without the right to purchase the
20 franchise as set forth in this section, or including a
21 provision intended to limit competition with the community
22 development district for a period longer than 5 years, is
23 void. Notwithstanding the voiding of any such franchise, the
24 entity to whom the franchise had been granted shall continue
25 to be liable to pay any applicable franchise fees, which would
26 otherwise have been due under the franchise, to the community
27 development district for so long as the entity continues to
28 operate and conduct its business in the community development
29 district.

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

1 364.03 Rates to be reasonable; performance of service;
2 maintenance of telecommunications facilities.--

3 (4) The reliability of telecommunications service is
4 critical to the public health, safety, and welfare, and
5 minimizing the severity, extent, and duration of outages of
6 telecommunications service is likewise critical to the public
7 health, safety, and welfare. Accordingly, the Legislature
8 directs the commission and the entities that provide such
9 service in this state to consistently and continuously seek,
10 promote, and encourage all reasonable means of enhancing and
11 maximizing the reliability of the telecommunications system.
12 Further, the Legislature directs the commission and all such
13 entities in this state to aggressively promote and encourage
14 the installation of underground facilities, where applicable
15 and to the maximum extent feasible, and to aggressively
16 promote and encourage the timely and orderly conversion of
17 existing overhead facilities to underground facilities.
18 Consistent with the Florida Reliable Electricity Enhancement
19 Act, ss. 366.201-366.208, effective January 1, 2007, it is
20 presumed that underground service constitutes the standard for
21 new telecommunication service in this state and that
22 underground service shall constitute modern, adequate,
23 sufficient, and efficient service within the meaning of this
24 section. The commission shall adopt rules to the extent of its
25 jurisdiction encouraging and promoting, to the maximum extent
26 feasible, the conversion of existing overhead facilities to
27 underground facilities on a priority basis, in coordination
28 with any conversion of electric facilities to underground
29 service, giving due consideration to the overall cost of
30 vehicular accidents involving poles and other overhead
31 facilities, as well as to corresponding facilities that

1 provide underground service, the costs associated with
2 rights-of-way and easements, the total operating and
3 maintenance costs, including, without limitation, costs of
4 tree-trimming for overhead facilities, the total costs
5 incurred and losses sustained by consumers as a result of
6 outages due to storm damage, and the costs of associated
7 insurance, attorney's fees, and legal settlement and costs.

8 Section 18. Paragraph (e) of subsection (2) of section
9 366.04, Florida Statutes, is amended to read:

10 366.04 Jurisdiction of commission.--

11 (2) In the exercise of its jurisdiction, the
12 commission shall have power over electric utilities for the
13 following purposes:

14 (e) To resolve, upon petition of a utility or on its
15 own motion, any territorial dispute involving service areas
16 between and among rural electric cooperatives, municipal
17 electric utilities, and other electric utilities under its
18 jurisdiction. In resolving territorial disputes, the
19 commission may consider, but not be limited to consideration
20 of, the ability of the utilities to expand services within
21 their own capabilities and the nature of the area involved,
22 including population, the degree of urbanization of the area,
23 its proximity to other urban areas, and the present and
24 reasonably foreseeable future requirements of the area for
25 other utility services. The Legislature finds and declares
26 that the installation of underground electric distribution
27 facilities to replace existing overhead facilities is in the
28 public interest and that such installation is not a
29 duplication of existing overhead facilities. Any governmental
30 entity that installs underground electric distribution
31 facilities to provide service within its geographic

1 jurisdiction, and subsequently, without violating any
2 then-effective franchise agreement, establishes a
3 governmentally-owned electric utility system and begins
4 operating such system, is not subject to the jurisdiction of
5 the commission over territorial disputes.

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

7
8 *****

9 SENATE SUMMARY

10 Creates the "Florida Reliable Electricity Enhancement
11 Act." Provides that, as of a specified date, placement of
12 electric distribution facilities underground is the
13 industry standard for new distribution facilities.
14 Requires public utilities to aggressively promote and
15 encourage the timely and orderly conversion of existing
16 overhead distribution facilities to underground
17 facilities. Details the general duties of a public
18 utility. Requires the Public Service Commission to ensure
19 that only the minimum reasonable general and indirect
20 costs associated with underground facilities are included
21 as costs of the underground facilities for any purpose.
22 Encourages the use of rights-of-way and rear yards as
23 suitable locations for underground facilities. Declares
24 that it is the policy of the state that counties,
25 municipalities, special districts, and community
26 development districts convert electric distribution,
27 telephone, and cable television facilities from overhead
28 systems to underground facilities. Requires that certain
29 contractual terms be included in a utility franchise.
30 Prohibits a governmental entity from giving or granting a
31 franchise without reserving to itself the right to
purchase the utility at the expiration of the franchise
or without reserving to itself the right to compete with
the private utility for a time period greater than 5
years. (See bill for details.)