

By Senator Posey

24-1574A-07

1   A bill to be entitled

2           An act relating to underground electric

3           distribution facilities; creating s. 366.201,

4           F.S.; creating the "Reliable Electricity

5           Enhancement Act"; creating s. 366.202, F.S.;

6           providing legislative intent; creating s.

7           366.203, F.S.; providing that as of a specified

8           date placement of electric distribution

9           facilities underground is the industry standard

10          for new distribution facilities; providing an

11          exception; requiring public utilities to

12          aggressively promote and encourage the timely

13          and orderly conversion of existing overhead

14          distribution facilities to underground

15          facilities; creating s. 366.204, F.S.;

16          providing additional duties of a public

17          utility; requiring certain reports; providing a

18          penalty; creating s. 366.205, F.S.; requiring

19          the Public Service Commission to ensure that

20          only the minimum reasonable general and

21          indirect costs associated with underground

22          facilities are included as costs of the

23          underground facilities for any purpose;

24          creating 366.206, F.S.; encouraging the use of

25          rights-of-way for the location of underground

26          facilities; providing a rebuttable presumption

27          that rights-of-way are sufficient for the

28          location of underground facilities; providing

29          an exception; creating s. 366.208, F.S.;

30          encouraging competition in providing utility

31          construction services; amending s. 366.04,

1 F.S.; declaring that the installation of  
2 underground electric distribution facilities to  
3 replace existing overhead facilities is in the  
4 public interest in the state; providing an  
5 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  
31

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, 2008, 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, 2008, 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, 2009, 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, 2008, 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 366.208, Florida Statutes, is  
9 created to read:

10 366.208 Encouraging competition in providing utility  
11 construction services.--It is the policy of the state to  
12 promote, to the maximum extent feasible and practicable,  
13 competition in all economic activity in the state, including  
14 the provision of utility construction services. Public  
15 utilities shall pursue competitive alternatives from qualified  
16 vendors and make such alternatives available to governmental  
17 entities that desire to convert existing overhead facilities  
18 to underground facilities.

19 Section 8. Paragraph (e) of subsection (2) of section  
20 366.04, Florida Statutes, is amended to read:

21 366.04 Jurisdiction of commission.--

22 (2) In the exercise of its jurisdiction, the  
23 commission shall have power over electric utilities for the  
24 following purposes:

25 (e) To resolve, upon petition of a utility or on its  
26 own motion, any territorial dispute involving service areas  
27 between and among rural electric cooperatives, municipal  
28 electric utilities, and other electric utilities under its  
29 jurisdiction. In resolving territorial disputes, the  
30 commission may consider, but not be limited to consideration  
31 of, the ability of the utilities to expand services within

1 | their own capabilities and the nature of the area involved,  
2 | including population, the degree of urbanization of the area,  
3 | its proximity to other urban areas, and the present and  
4 | reasonably foreseeable future requirements of the area for  
5 | other utility services. The Legislature finds and declares  
6 | that the installation of underground electric distribution  
7 | facilities to replace existing overhead facilities is in the  
8 | public interest and that such installation is not a  
9 | duplication of existing overhead facilities. Any governmental  
10 | entity that installs underground electric distribution  
11 | facilities to provide service within its geographic  
12 | jurisdiction, and subsequently, without violating any  
13 | then-effective franchise agreement, establishes a  
14 | governmentally-owned electric utility system and begins  
15 | operating such system, is not subject to the jurisdiction of  
16 | the commission over territorial disputes.

17 |           Section 9. This act shall take effect July 1, 2007.

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20 |                           SENATE SUMMARY

21 |           Creates the "Florida Reliable Electricity Enhancement  
22 |           Act." Provides that, as of a specified date, placement of  
23 |           electric distribution facilities underground is the  
24 |           industry standard for new distribution facilities.  
25 |           Requires public utilities to aggressively promote and  
26 |           encourage the timely and orderly conversion of existing  
27 |           overhead distribution facilities to underground  
28 |           facilities. Details the general duties of a public  
29 |           utility. Requires the Public Service Commission to ensure  
30 |           that only the minimum reasonable general and indirect  
31 |           costs associated with underground facilities are included  
          as costs of the underground facilities for any purpose.  
          (See bill for details.)