

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 466

INTRODUCER: Senator Bennett

SUBJECT: Coastal Barriers Infrastructure Finance Act

DATE: November 21, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Pre-meeting</b>
2.			EP	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

This bill creates part VII, chapter 163 of the Florida Statutes establishing the “Coastal Barriers Infrastructure Finance Act.” The bill allows registered electors of a coastal barrier region -- via petition followed by referendum -- to create a finance district to plan and pay for the construction of underground utilities. The local governing body of the designated region would serve as the infrastructure financing authority for the district. Powers of the authority include investing and borrowing money. The bill provides for the establishment of a local trust fund to receive proceeds generated through tax increment financing. Certain taxing authorities are exempted from the increment financing.

The bill creates subsections 163.71-163.79 of the Florida Statutes.

**II. Present Situation:**

**Coastal Building Zones**

Part III, chapter 161, Florida Statutes, contains the “Coastal Zone Protection Act of 1985” in which the Legislature recognizes the state’s coastal areas as some of Florida’s most valuable resources. The Legislature further recognizes that there is a tremendous cost to the state for post-disaster redevelopment in coastal areas and that preventive measures should be continually taken to reduce the harmful consequences of natural and manmade disasters or emergencies.<sup>1</sup>

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<sup>1</sup> See s. 161.539(3)-(4), F.S.

Section 161.54, F.S., provides specific definitions for a “coastal building zone”<sup>2</sup> and “construction”<sup>3</sup> occurring within these zones. Standards for construction in coastal building zones are outlined in s. 161.55, F.S., so as to “produce the minimum adverse impact on the beach and dune system.” The location of construction shall be a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability.<sup>4</sup>

## Underground Utilities

### Public Service Commission and Public Utility Center Reports

In its 2007 report to the Legislature on infrastructure hardening, the Florida Public Service Commission (PSC) stated that strengthening Florida’s electrical infrastructure to better withstand the impacts of severe weather events should include a wide range of hardening activities.<sup>5</sup> The report further recognized that, in some situations, conversion to underground electric distribution facilities could be preferable to overhead versions.

According to current PCS engineering specialists, underground facilities are more resistant to wind-related damages, including storms and vegetation-related interference.<sup>6</sup> Underground facilities are, however, subject to flood damage, which may increase the time to make repairs because repairs cannot be attempted until flood waters recede from vaults.<sup>7</sup>

An underground research program report coordinated by the Public Utility Research Center (PURC) at the University of Florida and prepared for Florida electric utilities outlined a number of potential benefits and disadvantages of underground facilities.<sup>8</sup> Some of the benefits cited included improved aesthetics, reduced live wire contact, and fewer outages during normal weather. Some of the disadvantages were longer duration interruptions per outage, reduced life expectancy, and higher maintenance and operating costs.

### Costs and Funding of Underground Utilities

The 2007 PSC report acknowledged that construction of underground electric distribution systems is generally more expensive than comparable overhead systems. The higher costs are due to the increased complexity of underground systems and other factors such as more expensive hardware and labor. Florida Power and Light Company estimates that, in general, the

<sup>2</sup> “Land area from the seasonal high-water line landward to a line 1,500 feet landward from the coastal construction control line as established pursuant to s. [161.053](#), and, for those coastal areas fronting on the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida and not included under s. [161.053](#), the land area seaward of the most landward velocity zone (V-zone) line as established by the Federal Emergency Management Agency and shown on flood insurance rate maps.”

<sup>3</sup> “. . . the carrying out of any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land.”

<sup>4</sup> Section 161.55(3), F.S.

<sup>5</sup> Florida Public Service Commission, *Report to the Legislature on Enhancing the Reliability of Florida’s Distribution and Transmission Grids During Extreme Weather* (July 2007) (on file with the Senate Committee on Community Affairs).

<sup>6</sup> E-mail from Melissa L’Amoreaux, Engineering Specialist I, Division of Economic Regulation, Florida Public Service Commission (Nov. 23, 2011) (on file with the Senate Committee on Community Affairs).

<sup>7</sup> *Id.*

<sup>8</sup> Infrasource, *Undergrounding Assessment Phase 1 Final Report: Literature Review and Analysis of Electrical Distribution Overhead to Underground Conversion* (Feb. 28, 2007) available at

<http://www.floridapsc.com/utilities/electricgas/EIProject/docs/InfraSourcePhase1FinalReport20070228.pdf#xml=http://www.psc.state.fl.us/search/pdfhi.aspx?query=underground+utilities&pr=default&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&id=4cb6a5ff11>.

basic costs for underground service in a new subdivision versus overhead service are about a third more.<sup>9</sup>

There are a variety of funding options available to cover these costs. The following financing methods were most often cited in studies according to the PURC-initiated report:

- Customer funded;
- Higher electricity rates;
- Higher taxes;
- Special tax districts;
- Utility set-asides;
- Federal funding;
- Private sector funding.

Pursuant to Florida Administrative Code Rule 25-6.078, utilities must file a per-lot differential charge for underground services in new subdivisions. This average differential is based on several different subdivision designs and is reviewed by the PSC at least every three years. There are credits available if the subdivision developer performs some of the work, such as installing conduit, but the facilities belong to the utility when completed.<sup>10</sup>

The conversion of existing overhead facilities is covered by Florida Administrative Code Rule 25-6.115, which sets forth how the cost of such conversion shall be calculated. This rule specifically gives the applicant (usually a city or county government, or homeowners association) the ability to construct part or all of the facilities, in lieu of the utility, subject to meeting utility standards and safety requirements.<sup>11</sup>

### **Local Municipal Improvements**

Section 170.01, F.S., allows municipalities, by their governing authority, to provide a number of local improvements, including the placement of underground electrical, telephone, and cable services.<sup>12</sup> Specifically, any municipality of this state may:

Pay for the relocation of utilities, including the placement underground of electrical, telephone, and cable television services, pursuant to voluntary agreement with the utility, but nothing contained in this paragraph shall affect a utility's right to locate or relocate its facilities on its own initiative at its own expense.<sup>13</sup>

Special assessments may be levied for local municipal improvements with conditions. Assessments may be collected only on benefited property and only at a rate of assessment based on the special advantage accruing to the property. The benefit is to be different in type or degree from benefits provided to the community as a whole.

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<sup>9</sup> Florida Power and Light, *Overhead and Underground Electrical Service FAQs*, <http://www.fpl.com/faqs/underground.shtml> (last visited Nov. 30, 2011). According to FPL, these costs may be more if additional work is required.

<sup>10</sup> See Rule 25-6.078, F.A.C.

<sup>11</sup> See Rule 25-6.115, F.A.C.

<sup>12</sup> Section 170.01(1)(d), F.S.

<sup>13</sup> *Id.*

### **Municipal Service Benefit Units**

Sections 125.01(q)-(r), F.S., grant counties the power to establish municipal service benefit units and municipal service taxing units in certain areas. These governmental units may levy service charges, special assessments or taxes within these units to fund services such as underground utilities.

### **Chapter 163, Florida Statutes: Intergovernmental Programs**

Chapter 163, Florida Statutes, provides governance for the establishment, operation, and regulation of intergovernmental programs. Among the programs in Part I are technical and financial assistance initiatives and the Miami River Improvement Act.<sup>14</sup> Part II is devoted to growth policy, county and municipal planning, and land redevelopment regulation.<sup>15</sup> Community redevelopment agencies (CRAs), neighborhood improvement districts, and regional transportation authorities are governed by parts III, IV, and V respectively.<sup>16</sup> Part VI addresses collaborative client information systems.<sup>17</sup>

### **Tax Increment Financing**

Tax Increment Financing (TIF) is a financial tool utilized by local governments to generate money for development projects in a specific geographic area or district. TIF began in California in 1952 as a way of providing matching funds for federal urban renewal plans. There are now TIF laws in nearly every state and the District of Columbia.<sup>18</sup>

The TIF process works as follows:

- The value of real property in a TIF district is determined as of a fixed date. This establishes a “base” or “frozen” year of assessed value.
- Going forward, taxing authorities in the district continue to receive tax revenues based on the assessed value in this frozen year.
- The tax increment is the difference between the amount of property tax revenues generated in the frozen year and any increase in tax revenues due to rising assessed values in subsequent years.
- Tax increment monies produced are available to fund projects designated by the local government either directly or through some form of debt service.

TIF is statutorily authorized in chapter 163, Florida Statutes, for community redevelopment<sup>19</sup> and transportation deficiencies.<sup>20</sup> Chapter 259, Florida Statutes, authorizes TIF for land conservation

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<sup>14</sup> See ss. 163.01-163.08, F.S.

<sup>15</sup> See ss. 163.2511-163.3248, F.S.

<sup>16</sup> See ss. 163.330-163.462, 163.501-163.526, and 163.565-163.572 respectively.

<sup>17</sup> See ss. 163.61-163.65, F.S.

<sup>18</sup> Harry M. Hipler, *Tax Increment Financing in Florida: A Tool for Local Government Revitalization, Renewal and Redevelopment*, Florida Bar Journal (July/August, 2007).

<sup>19</sup> ss. 163.387(1)(a)1.-2., F.S. The increment amount for CRAs is equal to 95 percent of the difference in ad valorem taxes.

<sup>20</sup> ss. 163.3182(5)(a)-(b), F.S. The increment amount for transportation deficiencies is a minimum of 25 percent of the difference in ad valorem taxes.

purposes.<sup>21</sup> Community redevelopment agencies and transportation deficiency authorities establish local trust funds to receive proceeds generated through TIF.<sup>22</sup> Counties and/or municipalities utilizing TIF for conservation lands employ a separate reserve account for tax increment deposits.<sup>23</sup>

Local governing bodies determine whether or not to implement these versions of TIF; elector referenda are not required. School districts are not defined as taxing authorities subject to TIF in any of the above situations. There are also additional public bodies or taxing authorities exempted from these TIF districts such as library and water management districts.<sup>24</sup>

### III. Effect of Proposed Changes:

**Section 1** creates an unspecified section of law requesting the Division of Statutory Revision to create part VII, chapter 163, Florida Statutes, consisting of ss. 163.71-163.79, F.S.

**Section 2** creates s. 163.71, F.S., citing part VII, chapter 163, Florida Statutes, as the “Coastal Barriers Infrastructure Finance Act (the Act).”

**Section 3** creates s. 163.72, F.S., providing findings and intent for an alternative mechanism for coastal barrier communities to finance and install utility delivery systems. The section asserts the environmental and economic value of the state’s coastal barriers and recognizes that dependable and secure infrastructure is a necessary component of sustaining these communities. It further recognizes that underground utilities provide safer and more reliable utility service during and after severe weather events.

**Section 4** creates s. 163.73, F.S., to define a number of terms used in the Act. These terms include:

- “coastal barrier” which means areas located within a coastal building zone as defined in s. 161.54, F.S.;
- “infrastructure” which means the construction or improvement of utility services delivered by wire or cable and any related land acquisition, design and administrative costs;
- “infrastructure-financing authority” which means the governing body of a county or municipality within an infrastructure-financing district; and
- “infrastructure-financing district” which means a coastal barrier geographic area designated by the governing body.
- “taxing authority” which means the public body authorized to levy an ad valorem tax on real property that is located within an infrastructure-financing district.

“Debt service millage” and “plan” are also defined.

<sup>21</sup> Sections 259.042(1) and (5), F.S. The increment amount for conservation lands may not exceed 95 percent of the difference in ad valorem taxes.

<sup>22</sup> Sections 163.386, 163.3182(5), F.S.

<sup>23</sup> Section 259.042(d), F.S.

<sup>24</sup> See s. 163.387(2)(c) F.S., for CRAs, s. 163.3182(6), F.S., for transportation deficiencies, and s. 259.042(9), F.S., for conservation lands.

**Section 5** creates s. 163.74, F.S., outlining a referendum process to create coastal barrier infrastructure-financing districts. The steps of this creation process are:

- Ten percent of the registered electors within a coastal barrier region petition the local governing body requesting a referendum on creating a district.
- The county or municipality governing board arranges for the referendum and publishes notice of the election in an area newspaper featuring the legal description and a map of the proposed designation area.
- The referendum is held within 120 days after verification of the petition provisions.
- The referendum may be conducted by mail pursuant to s. 101.6102, F.S.<sup>25</sup>
- If the referendum is approved by a simple majority of the electors voting in the election, the county or municipality governing board shall create a coastal barrier infrastructure-financing district by ordinance.

**Section 6** creates s. 163.75, F.S., establishing the governance of an infrastructure-financing district via an infrastructure-financing authority and demarcating the powers of this authority. These powers include:

- Planning and carrying out approved coastal barrier infrastructure projects.
- Investing infrastructure finance funds held in reserve or sinking funds or in securities in which savings banks may legally invest funds.
- Redeeming issued bonds at the redemption price or purchasing bonds at less than redemption price. All bonds redeemed or purchased are canceled.
- Borrowing money and issuing debt obligations.
- Applying for, and accepting, loans and grants from the Federal government, the state, or private sources. The authority may also enter into contracts with the Federal government.
- Contracting with any person, public or private, to make and carry out plans.
- Appropriating funds and making necessary expenditures.
- Entering into agreements with other public bodies which may extend over any period consistent with state law and rule.

**Section 7** creates s. 163.76, F.S., providing a framework to formulate a coastal barrier infrastructure plan. The infrastructure-financing authority shall adopt a plan within six months after the creation of the district. The plan must include an inventory of all utility infrastructure located above ground; identify rights-of-way and property needed for construction; and include an engineering design for underground utility facilities.

**Section 8** creates s. 163.77, F.S., which directs coastal barrier infrastructure financing authorities to establish and administer a local trust fund for the duration of any uncompleted projects or until any incurred debt is no longer outstanding.

Beginning in the first fiscal year after the creation of the district, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within the district. The

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<sup>25</sup> The supervisor of elections shall be responsible for the conduct of any election and the costs of a mail ballot election shall be borne by the jurisdiction initiating the calling of the election, unless otherwise provided by law.

increment must be at least 75 percent of the difference between the ad valorem tax levied each year by each taxing authority, and the ad valorem taxes which would have been produced before the effective date of the ordinance funding the trust fund. These ad valorem tax amounts are exclusive of any debt service millage.

**Section 9** creates s. 163.78, F.S., specifying certain public bodies exempted from the increment requirement. Among the exempted public bodies are:

- Special districts which levy ad valorem taxes in more than one county.
- Community redevelopment agencies and neighborhood improvement districts.
- Metropolitan transportation authorities and water management districts.

School districts are not listed as exempted public bodies.

**Section 10** creates s. 163.79 F.S., which formulates a dissolution process for coastal barrier infrastructure-financing districts. Upon completion of all projects and repayment of all debt issued to finance projects, the district shall be dissolved. Assets and liabilities are transferred to the county or municipality in which the district is located. Any remaining assets shall be used for maintenance of completed infrastructure projects.

**Section 11** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Because districts would be functional and political entities of the city or county that created them, anything districts generated, such as their plans, would be public records and available to anyone who requested them. Expenditures would be identified in local government budgets and subject to the annual audits that local governments undergo.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

If coastal barrier infrastructure-financing districts are established and underground utilities are installed, residents of the districts will have utilities which are more resistant to wind-related damages, including storms and vegetation-related interference. These utilities will, however, be subject to flood damage. Companies which provide underground utility conversions may realize indeterminate increases in business activity.

**C. Government Sector Impact:**

If registered electors successfully petition for a coastal barrier infrastructure-financing district referendum, local governments will experience indeterminate costs related to conducting the referendum. Should referenda pass, local governments must create districts and will be charged with administering and governing them.

Affected taxing authorities in coastal barrier infrastructure financing districts will have their revenues capped at the frozen year level while districts are in existence. School districts are included among these taxing authorities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.