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LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/09/2012 06:41 PM

Senator Evers moved the following:

Senate Amendment (with title amendment)

Between lines 322 and 323

insert:

Section 3. Section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by relocation of utility; expenses.—

(1) If a ~~Any~~ utility that is ~~heretofore or hereafter~~ placed upon, under, over, or along any public road or publicly owned rail corridor ~~that~~ is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion,



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14 of such public road or publicly owned rail corridor, the utility
15 owner shall, upon 30 days' written notice to the utility or its
16 agent by the authority, initiate the work necessary to alleviate
17 the interference ~~be removed or relocated by such utility~~ at its
18 own expense except as provided in paragraphs (a)-(g) ~~(a)-(f)~~.
19 The work must be completed within such reasonable time as stated
20 in the notice or such time as agreed to by the authority and the
21 utility owner.

22 (a) If the relocation of utility facilities, as referred to
23 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
24 627 of the 84th Congress, is necessitated by the construction of
25 a project on the federal-aid interstate system, including
26 extensions thereof within urban areas, and the cost of the
27 project is eligible and approved for reimbursement by the
28 Federal Government to the extent of 90 percent or more under the
29 Federal Aid Highway Act, or any amendment thereof, then in that
30 event the utility owning or operating such facilities shall
31 perform any necessary work ~~relocate the facilities~~ upon notice
32 from ~~order of~~ the department, and the state shall pay the entire
33 expense properly attributable to such work ~~relocation~~ after
34 deducting therefrom any increase in the value of a ~~the~~ new
35 facility and any salvage value derived from an ~~the~~ old facility.

36 (b) When a joint agreement between the department and the
37 utility is executed for utility ~~improvement, relocation, or~~
38 ~~removal~~ work to be accomplished as part of a contract for
39 construction of a transportation facility, the department may
40 participate in those utility work ~~improvement, relocation, or~~
41 ~~removal~~ costs that exceed the department's official estimate of
42 the cost of the work by more than 10 percent. The amount of such



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43 participation shall be limited to the difference between the
44 official estimate of all the work in the joint agreement plus 10
45 percent and the amount awarded for this work in the construction
46 contract for such work. The department may not participate in
47 any utility work ~~improvement, relocation, or removal~~ costs that
48 occur as a result of changes or additions during the course of
49 the contract.

50 (c) When an agreement between the department and utility is
51 executed for utility ~~improvement, relocation, or removal~~ work to
52 be accomplished in advance of a contract for construction of a
53 transportation facility, the department may participate in the
54 cost of clearing and grubbing necessary to perform such work.

55 (d) If the utility facility ~~being removed or relocated~~ was
56 initially installed to exclusively serve the authority or
57 ~~department~~, its tenants, or both, the authority department shall
58 bear the costs of the removing or relocating that utility work
59 facility. However, the authority department is not responsible
60 for ~~bearing~~ the cost of utility work related to removing or
61 ~~relocating~~ any subsequent additions to that facility for the
62 purpose of serving others.

63 (e) If, under an agreement between a utility and the
64 authority entered into after July 1, 2009, the utility conveys,
65 subordinates, or relinquishes a compensable property right to
66 the authority for the purpose of accommodating the acquisition
67 or use of the right-of-way by the authority, without the
68 agreement expressly addressing future responsibility for the
69 cost of necessary utility work removing or relocating the
70 utility, the authority shall bear the cost of removal or
71 relocation. This paragraph does not impair or restrict, and may



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72 not be used to interpret, the terms of any such agreement
73 entered into before July 1, 2009.

74 (f) If the utility is an electric facility being relocated
75 underground in order to enhance vehicular, bicycle, and
76 pedestrian safety and in which ownership of the electric
77 facility to be placed underground has been transferred from a
78 private to a public utility within the past 5 years, the
79 department shall incur all costs of the necessary utility work
80 relocation.

81 (g) An authority may bear the costs of utility work
82 required to eliminate an unreasonable interference when the
83 utility is not able to establish that it has a compensable
84 property right in the particular property where the utility is
85 located if:

86 1. The utility was physically located on the particular
87 property before the authority acquired rights in the property;

88 2. The utility demonstrates that it has a compensable
89 property right in all adjacent properties along the alignment of
90 the utility; and

91 3. The information available to the authority does not
92 establish the relative priorities of the authority's and the
93 utility's interests in the particular property.

94 (2) If such utility work ~~removal or relocation~~ is
95 incidental to work to be done on such road or publicly owned
96 rail corridor, the notice shall be given at the same time the
97 contract for the work is advertised for bids, or no less than 30
98 days before ~~prior to~~ the commencement of such work by the
99 authority, whichever occurs later.

100 (3) Whenever a notice from ~~an order~~ of the authority



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101 requires such utility work ~~removal or change in the location of~~
102 ~~any utility from the right-of-way of a public road or publicly~~
103 ~~owned rail corridor,~~ and the owner thereof fails to perform the
104 work ~~remove or change the same~~ at his or her own expense ~~to~~
105 ~~conform to the order~~ within the time stated in the notice or
106 such other time as agreed to by the authority and the utility
107 owner, the authority shall proceed to cause the utility work to
108 be performed ~~to be removed~~. The expense thereby incurred shall
109 be paid out of any money available therefor, and such expense
110 shall, except as provided in subsection (1), be charged against
111 the owner and levied and collected and paid into the fund from
112 which the expense of such relocation was paid.

113 Section 4. Subsection (1) of section 337.404, Florida
114 Statutes, is amended to read:

115 337.404 Removal or relocation of utility facilities; notice
116 and order; court review.—

117 (1) Whenever it becomes ~~shall become~~ necessary for the
118 authority to perform utility work ~~remove or relocate any utility~~
119 as provided in s. 337.403 ~~the preceding section,~~ the owner of
120 the utility~~,~~ or the owner's chief agent~~,~~ shall be given notice
121 that the authority will perform ~~of such work~~ removal or
122 relocation and, after the work is completed, shall be given an
123 order requiring the payment of the cost thereof~~,~~ and a ~~shall be~~
124 ~~given~~ reasonable time, which may ~~shall~~ not be less than 20 or
125 ~~nor~~ more than 30 days, in which to appear before the authority
126 to contest the reasonableness of the order. Should the owner or
127 the owner's representative not appear, the determination of the
128 cost to the owner shall be final. Authorities considered
129 agencies for the purposes of chapter 120 shall adjudicate



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130 removal or relocation of utilities pursuant to chapter 120.

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132 ===== T I T L E A M E N D M E N T =====

133 And the title is amended as follows:

134 Delete lines 2 - 9

135 and insert:

136 An act relating to mitigation; amending s. 341.301,
137 F.S.; revising the definition of the term "limited
138 covered accident"; amending s. 341.302, F.S.;
139 authorizing the Department of Transportation to
140 contract to indemnify against loss and purchase
141 liability insurance coverage for National Railroad
142 Passenger Corporation subject to specified terms and
143 conditions; amending ss. 337.403 and 337.404, F.S.;
144 clarifying provisions relating to responsibility for
145 the work and costs for alleviating interference on a
146 public road or publicly owned rail corridor caused by
147 a utility facility; requiring the utility owner to
148 initiate and complete the work necessary within a
149 certain time period; requiring the local governmental
150 authority to bear the costs of work on a utility
151 facility that was initially installed to serve the
152 governmental entity or its tenants; providing that the
153 governmental entity is not responsible for the costs
154 of utility work related to subsequent additions to the
155 facility; requiring that the local governmental
156 authority bear the costs of removing or relocating a
157 utility facility under certain circumstances;
158 providing for notice to the utility; revising



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159 provisions for payment of costs; revising provisions
160 for completion of work when the utility owner does not
161 perform the work; amending s. 373.4137,