

By Senator Flores

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1                                   A bill to be entitled  
2       An act relating to the location of utilities; amending  
3       s. 125.42, F.S.; revising the circumstances under  
4       which a board of county commissioners is authorized to  
5       grant to a person or private corporation a license for  
6       specified projects related to lines for the  
7       transmission of certain public utilities and  
8       communication services; conforming a cross-reference;  
9       amending s. 337.401, F.S.; authorizing the Department  
10      of Transportation and certain local governmental  
11      entities to prescribe and enforce rules or regulations  
12      regarding the placement and maintenance of specified  
13      structures and lines within the right-of-way limits of  
14      roads or publicly owned rail corridors under their  
15      respective jurisdictions; prohibiting a municipality  
16      or county from requiring a utility or a provider of  
17      communications services to provide proprietary maps of  
18      previously permitted facilities; amending s. 337.403,  
19      F.S.; specifying that a utility located within certain  
20      right-of-way limits must initiate and bear the cost  
21      necessary to alleviate any interference to the use of  
22      certain public roads or rail corridors under certain  
23      circumstances; conforming a cross-reference; requiring  
24      an authority or an entity other than the authority to  
25      bear the cost of relocating a utility under certain  
26      circumstances; providing applicability; requiring the  
27      authority under certain circumstances to pay the  
28      entire expense attributable to relocating a utility  
29      after certain deductions; requiring the authority to

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30 bear the cost of the utility work necessary to  
31 eliminate an unreasonable interference if the utility  
32 is lawfully located within a certain utility easement;  
33 providing findings of an important state interest;  
34 providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 125.42, Florida Statutes, is amended to  
39 read:

40 125.42 Water, sewage, gas, power, telephone, other utility,  
41 and television lines within the right-of-way limits of ~~along~~  
42 county roads and highways.-

43 (1) The board of county commissioners, with respect to  
44 property located without the corporate limits of any  
45 municipality, is authorized to grant a license to any person or  
46 private corporation to construct, maintain, repair, operate, and  
47 remove lines for the transmission of water, sewage, gas, power,  
48 telephone, other public utilities, and television, or other  
49 communications services as defined in s. 202.11(1) under, on,  
50 over, across, or within the right-of-way limits of ~~and along~~ any  
51 county highway or any public road or highway acquired by the  
52 county or public by purchase, gift, devise, dedication, or  
53 prescription. However, the board of county commissioners shall  
54 include in any instrument granting such license adequate  
55 provisions:

56 (a) To prevent the creation of any obstructions or  
57 conditions which are or may become dangerous to the traveling  
58 public;

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59 (b) To require the licensee to repair any damage or injury  
60 to the road or highway by reason of the exercise of the  
61 privileges granted in any instrument creating such license and  
62 to repair the road or highway promptly, restoring it to a  
63 condition at least equal to that which existed immediately prior  
64 to the infliction of such damage or injury;

65 (c) Whereby the licensee shall hold the board of county  
66 commissioners and members thereof harmless from the payment of  
67 any compensation or damages resulting from the exercise of the  
68 privileges granted in any instrument creating the license; and

69 (d) As may be reasonably necessary, for the protection of  
70 the county and the public.

71 (2) A license may be granted in perpetuity or for a term of  
72 years, subject, however, to termination by the licensor, in the  
73 event the road or highway is closed, abandoned, vacated,  
74 discontinued, or reconstructed.

75 (3) The board of county commissioners is authorized to  
76 grant exclusive or nonexclusive licenses for the purposes stated  
77 herein for television.

78 (4) This law is intended to provide an additional method  
79 for the granting of licenses and shall not be construed to  
80 repeal any law now in effect relating to the same subject.

81 (5) In the event of widening, repair, or reconstruction of  
82 any such road, the licensee shall move or remove such water,  
83 sewage, gas, power, telephone, and other utility lines and  
84 television lines at no cost to the county should they be found  
85 by the county to be unreasonably interfering, except as provided  
86 in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

87 Section 2. Paragraph (a) of subsection (1), subsection (2),

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88 and paragraph (b) of subsection (3) of section 337.401, Florida  
89 Statutes, are amended to read:

90 337.401 Use of right-of-way for utilities subject to  
91 regulation; permit; fees.—

92 (1) (a) The department and local governmental entities,  
93 referred to in this section and in ss. 337.402, 337.403, and  
94 337.404 ~~ss. 337.401-337.404~~ as the "authority," which ~~that~~ have  
95 jurisdiction and control of public roads or publicly owned rail  
96 corridors are authorized to prescribe and enforce reasonable  
97 rules or regulations with reference to the placing and  
98 maintaining ~~along,~~ across, or on, or within the right-of-way  
99 limits of any road or publicly owned rail corridors under their  
100 respective jurisdictions any electric transmission, telephone,  
101 telegraph, or other communications services lines; pole lines;  
102 poles; railways; ditches; sewers; water, heat, or gas mains;  
103 pipelines; fences; gasoline tanks and pumps; or other structures  
104 referred to in this section and in ss. 337.402, 337.403, and  
105 337.404 ~~this section~~ as the "utility." The department may enter  
106 into a permit-delegation agreement with a governmental entity if  
107 issuance of a permit is based on requirements that the  
108 department finds will ensure the safety and integrity of  
109 facilities of the Department of Transportation; however, the  
110 permit-delegation agreement does not apply to facilities of  
111 electric utilities as defined in s. 366.02(2).

112 (2) The authority may grant to any person who is a resident  
113 of this state, or to any corporation which is organized under  
114 the laws of this state or licensed to do business within this  
115 state, the use of a right-of-way for the utility in accordance  
116 with such rules or regulations as the authority may adopt. No

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117 utility shall be installed, located, or relocated unless  
118 authorized by a written permit issued by the authority. However,  
119 for public roads or publicly owned rail corridors under the  
120 jurisdiction of the department, a utility relocation schedule  
121 and relocation agreement may be executed in lieu of a written  
122 permit. The permit shall require the permit holder to be  
123 responsible for any damage resulting from the issuance of such  
124 permit. In exercising its authority over a utility under this  
125 section, a municipality or county may not require a utility to  
126 provide proprietary maps of facilities that were previously  
127 subject to a permit from the authority. The authority may  
128 initiate injunctive proceedings as provided in s. 120.69 to  
129 enforce provisions of this subsection or any rule or order  
130 issued or entered into pursuant thereto.

131 (3)

132 (b) Registration described in paragraph (a) does not  
133 establish a right to place or maintain, or priority for the  
134 placement or maintenance of, a communications facility in roads  
135 or rights-of-way of a municipality or county. Each municipality  
136 and county retains the authority to regulate and manage  
137 municipal and county roads or rights-of-way in exercising its  
138 police power. Any rules or regulations adopted by a municipality  
139 or county which govern the occupation of its roads or rights-of-  
140 way by providers of communications services must be related to  
141 the placement or maintenance of facilities in such roads or  
142 rights-of-way, must be reasonable and nondiscriminatory, and may  
143 include only those matters necessary to manage the roads or  
144 rights-of-way of the municipality or county. In exercising its  
145 authority over providers of communications services under this

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146 section, a municipality or county may not require a provider of  
147 communications services to provide proprietary maps of  
148 facilities that were previously subject to a permit from the  
149 authority.

150 Section 3. Subsection (1) of section 337.403, Florida  
151 Statutes, is amended to read:

152 337.403 Interference caused by utility; expenses.—

153 (1) If a utility that is placed upon, under, over, or  
154 within the right-of-way limits of ~~along~~ any public road or  
155 publicly owned rail corridor is found by the authority to be  
156 unreasonably interfering in any way with the convenient, safe,  
157 or continuous use, or the maintenance, improvement, extension,  
158 or expansion, of such public road or publicly owned rail  
159 corridor, the utility owner shall, upon 30 days' written notice  
160 to the utility or its agent by the authority, initiate the work  
161 necessary to alleviate the interference at its own expense  
162 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must  
163 be completed within such reasonable time as stated in the notice  
164 or such time as agreed to by the authority and the utility  
165 owner. If the authority requires the relocation of a utility for  
166 purposes not described in this subsection and the utility owner  
167 is authorized by state or common law or state or local agreement  
168 to place facilities in the public rights-of-way, the authority  
169 must bear the cost of relocating the utility. If relocation is  
170 required as a condition or result of a project by an entity  
171 other than an authority, the entity other than the authority  
172 must bear the cost of relocating the utility except to the  
173 extent that the relocation would otherwise be required in  
174 connection with a transportation improvement identified in the

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175 authority's capital improvement schedule and scheduled for  
176 construction within 5 years. This subsection does not impair any  
177 right of the holder of a private railroad right-of-way or  
178 obligate the holder of such private railroad right-of-way to  
179 bear the relocation cost in such railroad right-of-way, subject  
180 to any agreement between the holder of the private railroad  
181 right-of-way and a utility that otherwise allocates such  
182 relocation cost. This subsection also does not affect a lawful  
183 permit or contract entered into between an authority and a  
184 utility before October 1, 2015. To the extent that an authority  
185 is required by this subsection to bear the cost of relocating a  
186 utility, the authority shall pay the entire expense properly  
187 attributable to such work after deducting any increase in the  
188 value of a new facility and any salvage value derived from an  
189 old facility.

190 (a) If the relocation of utility facilities, as referred to  
191 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
192 84-627, is necessitated by the construction of a project on the  
193 federal-aid interstate system, including extensions thereof  
194 within urban areas, and the cost of the project is eligible and  
195 approved for reimbursement by the Federal Government to the  
196 extent of 90 percent or more under the Federal Aid Highway Act,  
197 or any amendment thereof, then in that event the utility owning  
198 or operating such facilities shall perform any necessary work  
199 upon notice from the department, and the state shall pay the  
200 entire expense properly attributable to such work after  
201 deducting therefrom any increase in the value of a new facility  
202 and any salvage value derived from an old facility.

203 (b) When a joint agreement between the department and the

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204 utility is executed for utility work to be accomplished as part  
205 of a contract for construction of a transportation facility, the  
206 department may participate in those utility work costs that  
207 exceed the department's official estimate of the cost of the  
208 work by more than 10 percent. The amount of such participation  
209 is limited to the difference between the official estimate of  
210 all the work in the joint agreement plus 10 percent and the  
211 amount awarded for this work in the construction contract for  
212 such work. The department may not participate in any utility  
213 work costs that occur as a result of changes or additions during  
214 the course of the contract.

215 (c) When an agreement between the department and utility is  
216 executed for utility work to be accomplished in advance of a  
217 contract for construction of a transportation facility, the  
218 department may participate in the cost of clearing and grubbing  
219 necessary to perform such work.

220 (d) If the utility facility was initially installed to  
221 exclusively serve the authority or its tenants, or both, the  
222 authority shall bear the costs of the utility work. However, the  
223 authority is not responsible for the cost of utility work  
224 related to any subsequent additions to that facility for the  
225 purpose of serving others. For a county or municipality, if such  
226 utility facility was installed in the right-of-way as a means to  
227 serve a county or municipal facility on a parcel of property  
228 adjacent to the right-of-way and if the intended use of the  
229 county or municipal facility is for a use other than  
230 transportation purposes, the obligation of the county or  
231 municipality to bear the costs of the utility work shall extend  
232 only to utility work on the parcel of property on which the



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233 facility of the county or municipality originally served by the  
234 utility facility is located.

235 (e) If, under an agreement between a utility and the  
236 authority entered into after July 1, 2009, the utility conveys,  
237 subordinates, or relinquishes a compensable property right to  
238 the authority for the purpose of accommodating the acquisition  
239 or use of the right-of-way by the authority, without the  
240 agreement expressly addressing future responsibility for the  
241 cost of necessary utility work, the authority shall bear the  
242 cost of removal or relocation. This paragraph does not impair or  
243 restrict, and may not be used to interpret, the terms of any  
244 such agreement entered into before July 1, 2009.

245 (f) If the utility is an electric facility being relocated  
246 underground in order to enhance vehicular, bicycle, and  
247 pedestrian safety and in which ownership of the electric  
248 facility to be placed underground has been transferred from a  
249 private to a public utility within the past 5 years, the  
250 department shall incur all costs of the necessary utility work.

251 (g) An authority may bear the costs of utility work  
252 required to eliminate an unreasonable interference when the  
253 utility is not able to establish that it has a compensable  
254 property right in the particular property where the utility is  
255 located if:

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

258 2. The utility demonstrates that it has a compensable  
259 property right in adjacent properties along the alignment of the  
260 utility or, after due diligence, certifies that the utility does  
261 not have evidence to prove or disprove that it has a compensable

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262 property right in the particular property where the utility is  
263 located; and

264 3. The information available to the authority does not  
265 establish the relative priorities of the authority's and the  
266 utility's interests in the particular property.

267 (h) If a municipally owned utility or county-owned utility  
268 is located in a rural area of opportunity, as defined in s.  
269 288.0656(2), and the department determines that the utility is  
270 unable, and will not be able within the next 10 years, to pay  
271 for the cost of utility work necessitated by a department  
272 project on the State Highway System, the department may pay, in  
273 whole or in part, the cost of such utility work performed by the  
274 department or its contractor.

275 (i) If the relocation of utility facilities is necessitated  
276 by the construction of a commuter rail service project or an  
277 intercity passenger rail service project and the cost of the  
278 project is eligible and approved for reimbursement by the  
279 Federal Government, then in that event the utility owning or  
280 operating such facilities located by permit on a department-  
281 owned rail corridor shall perform any necessary utility  
282 relocation work upon notice from the department, and the  
283 department shall pay the expense properly attributable to such  
284 utility relocation work in the same proportion as federal funds  
285 are expended on the commuter rail service project or an  
286 intercity passenger rail service project after deducting  
287 therefrom any increase in the value of a new facility and any  
288 salvage value derived from an old facility. In no event shall  
289 the state be required to use state dollars for such utility  
290 relocation work. This paragraph does not apply to any phase of

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291 the Central Florida Commuter Rail project, known as SunRail.

292 (j) If a utility is lawfully located within an existing and  
293 valid utility easement granted by recorded plat, regardless of  
294 whether such land was subsequently acquired by the authority by  
295 dedication, transfer of fee, or otherwise, the authority must  
296 bear the cost of the utility work required to eliminate an  
297 unreasonable interference.

298 Section 4. The Legislature finds that a proper and  
299 legitimate state purpose is served by clarifying a utility's  
300 responsibility for relocating its facilities within a right-of-  
301 way or within a utility easement granted by recorded plat.  
302 Therefore, the Legislature determines and declares that this act  
303 fulfills an important state interest.

304 Section 5. This act shall take effect upon becoming a law.