

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, October 20, 2015

TIME: 12:30—2:30 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Brandes, Vice Chair; Senators Abruzzo, Bradley, Dean, Diaz de la Portilla, Hutson, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 160 Gaetz	Ad Valorem Tax Exemption for Deployed Servicemembers; Expanding the military operations that qualify a servicemember deployed in support of such an operation in the previous calendar year for an additional ad valorem tax exemption; providing an extended deadline and specifying procedures for filing an application for such tax exemption for a qualifying deployment during the 2014 calendar year, etc. CA 10/20/2015 Fav/CS FT FP	Fav/CS Yeas 7 Nays 0
2	SB 416 Flores	Location of Utilities; Revising the circumstances under which a board of county commissioners is authorized to grant to a person or private corporation a license for specified projects related to lines for the transmission of certain public utilities and communication services; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding the placement and maintenance of specified structures and lines within the right-of-way limits of roads or publicly owned rail corridors under their respective jurisdictions, etc. CA 10/20/2015 Fav/CS TR FP	Fav/CS Yeas 7 Nays 0
3	SB 190 Hutson	Conservation Easements; Providing that it is not necessary to make annual application for exemption of a conservation easement, etc. CA 10/20/2015 Fav/CS FT AP	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 160

INTRODUCER: Community Affairs Committee and Senator Gaetz

SUBJECT: Ad Valorem Tax Exemption for Deployed Servicemembers

DATE: October 19, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 160 provides 11 new designated operations for which deployed servicemembers may qualify for an ad valorem tax exemption and removes one operation for which the time to qualify for exemption has expired. A servicemember may receive the exemption on homestead property for the portion of the preceding calendar year which the servicemember was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of statutorily-identified military operations.

The bill extends the normal March 1 application deadline for the exemption application for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016. Even if an application has not been timely filed by June 1, 2016, the bill allows a property appraiser to grant the exemption under certain circumstances and provides for the ability to petition for review by a value adjustment board (VAB) without paying the associated filing fee.

The bill also provides refund procedures for servicemembers who were on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years.

II. Present Situation:

Property Valuation in Florida

Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”¹ The property tax burden for an

¹ FLA. CONST. art. VII, s. 2.

owner of any particular piece of real estate will depend on the property's just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value or what a willing buyer would pay a willing seller for the property in an arms-length transaction.²

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.³ Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of its character or use.⁴ Land used for conservation purposes must be assessed solely on the basis of character or use.⁵ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁶ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 or older.⁷ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁸ Certain working waterfront property is assessed based upon the property's current use.⁹

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹⁰

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹¹

² See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ The constitutional provisions in Art. VII, section 4 of the Florida Constitution are implemented in Part II of ch. 193, F.S.

⁴ FLA. CONST. art. VII, s. 4(a).

⁵ FLA. CONST. art. VII, s. 4(b).

⁶ FLA. CONST. art. VII, s. 4(e).

⁷ FLA. CONST. art. VII, s. 4(f).

⁸ FLA. CONST. art. VII, s. 4(i).

⁹ FLA. CONST. art. VII, s. 4(j).

¹⁰ FLA. CONST. art. VII, ss. 3 and 6.

¹¹ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); See also *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Ad Valorem Exemption for Deployed Servicemembers

Article VII, section 3(g) of the Florida Constitution extends the homestead exemption to members of the military who were deployed outside of the United States “in support of military operations designated by the legislature.” Section 196.173, F.S., implements the ad valorem tax exemption for homestead property owned by a military servicemember¹² deployed outside of the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature. The exemption is equal to the taxable value of the homestead of the servicemember on January 1 of the year in which the exemption is sought multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.¹³

Eligible Military Operations

The exemption is currently available to servicemembers who had a qualifying deployment in support of:

- Operation Noble Eagle, which began on September 15, 2001;
- Operation Enduring Freedom, which began on October 7, 2001;
- Operation Iraqi Freedom, which began on March 19, 2003, and ended on August 31, 2010;
- Operation New Dawn, which began September 1, 2010, and ended on December 15, 2011; or
- Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.¹⁴

Annual Report of All Known and Unclassified Military Operations

By January 15 of each year, the Department of Military Affairs must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.¹⁵

To the extent possible, the report must include:

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The date each military operation commenced; and

¹² The term “servicemember” is defined as a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard. See s. 196.173(7), F.S.

¹³ Section 196.173(4), F.S.

¹⁴ Section 196.173(2), F.S.

¹⁵ Section 196.173(3), F.S.

- The date each military operation terminated, unless the operation is ongoing.¹⁶

Exemption Application

A servicemember who seeks to claim the tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment.¹⁷ The application for the exemption must be made on a form prescribed by the Department of Revenue and furnished by the property appraiser. The servicemember must provide with the application:

- Proof of a qualifying deployment;
- The dates of the qualifying deployment; and
- Other information necessary to verify eligibility for and the amount of the exemption.

The property appraiser must consider a servicemember's application for the exemption within 30 days after receipt of the application or within 30 days after receiving notice of the designation of qualifying deployments by the Legislature, whichever is later.¹⁸ If a servicemember's application is denied, the property appraiser must send a notice of disapproval no later than July 1, citing the reason for disapproval and advising the servicemember of the right to appeal the decision to the value adjustment board along with the procedures for filing such appeal.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 196.173, F.S., to add 11 unclassified military operations for which deployed servicemembers may qualify for the exemption. These 11 operations are identified in the statutorily required report submitted to the Legislature by the Department of Military Affairs²⁰ and include the following operations:

- Operation Joint Guardian, which began on June 12, 1999;
- Operation Octave Shield, which began in 2000;
- Operation Trans-Sahara Counterterrorism Partnership, which began in June 2005;
- Operation Nomad Shadow, which began in 2007;
- Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007;
- Operation Objective Voice, which began in 2009;
- Operation Georgia Deployment Program, which began in August 2009;
- Operation Copper Dune, which began in 2010;
- Operation Observant Compass, which began in October 2011;
- Operation Juniper Shield, which began in 2013; and
- Operation Inherent Resolve, which began on August 8, 2014.

The bill removes Operation Iraqi Freedom from the list of qualifying operations because the time for claiming an exemption for the applicable tax rolls has expired.

¹⁶ *Id.*

¹⁷ Section 196.173(5)(a), F.S.

¹⁸ Section 196.173(6), F.S.

¹⁹ Sections 194.015 and 194.011, F.S.

²⁰ State of Florida Department of Military Affairs Office of the Adjutant General, *Named Operations Report* (February 17, 2015).

Section 2 provides an extension of the application deadline for qualifying deployments during the 2014 and 2015 calendar years. The bill extends the normal March 1 application deadline for the exemption application for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016.

Additionally, the bill specifies that a property appraiser may grant the exemption to an otherwise qualifying applicant who fails to meet the June 1, 2016, deadline, under the following conditions:

- The applicant files on or before the 25th day after the mailing by the property appraiser during the 2016 calendar year;
- The applicant is qualified under the exemption; and
- The applicant produces sufficient evidence to demonstrate that they were unable to apply in a timely manner.

Furthermore, the bill provides an opportunity for review by a VAB, if the applicant files a petition on or before the 25th day following the mailing by the property appraiser of the notices required under s. 194.011(1), F.S., and demonstrates extenuating circumstances that warrant granting the exemption. Payment of the filing fee is waived.

The bill also provides that if the number of days that a servicemember was on qualifying deployments in the 2014 and 2015 calendar years exceeds 365 days, the servicemember may receive a refund of taxes paid for the 2015 tax year. The amount of the 2015 tax year refund is equal to the number of days in excess of 365 that the servicemember was on qualifying deployments in the 2014 and 2015 calendar years divided by 365.

Section 3 provides that the bill is effective upon becoming law and first applies to ad valorem tax rolls for 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

During the 2015 session, the Revenue Estimating Conference determined that a similar bill, CS/SB 7052, would have reduced local governments' revenues by \$200,000 annually.²¹

B. Private Sector Impact:

If the bill becomes law, servicemembers deployed to one of the aforementioned military operations may receive property tax relief.

C. Government Sector Impact:

The bill provides additional duties to county property appraisers and VABs, which must consider servicemembers' applications for exemption that would otherwise not have met the filing deadline. The bill may also require a tax collector to issue a refund to a servicemember if the servicemember was on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.173 of the Florida Statutes.

This bill creates an undesignated section of the Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on October 20, 2015:**

Provides an extension of the application deadline for qualifying deployments during the 2014 and 2015 calendar years, rather than the 2014 calendar year only. Similarly, the bill extends the normal March 1 application deadline for the exemption application for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016.

Furthermore, the bill provides refund procedures for servicemembers who were on

²¹ Revenue Estimating Conference, *Deployed Service Members Exemptions, Proposed Language*, (March 6, 2015) available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page230-232.pdf (last visited September 18, 2015).

qualifying deployments for more than 365 days during the 2014 and 2015 calendar years. The bill also provides that the bill first applies to ad valorem tax rolls for 2016.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



267652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 89
and insert:

Section 2. (1) Notwithstanding provisions in s. 196.173, Florida Statutes, to the contrary:

(a) The deadline for an applicant to file an application with the property appraiser for an additional ad valorem tax exemption under s. 196.173, Florida Statutes, for the 2016 year is June 1, 2016.



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11 (b) For purposes of calculating the 2016 exemption for
12 operations added by this act, a servicemember may include the
13 number of days he or she was on qualifying deployments during
14 the 2014 and 2015 calendar years as days he or she was on a
15 qualifying deployment in the preceding calendar year.

16 (2) If an application is not timely filed under subsection
17 (1), a property appraiser may grant the exemption if:

18 (a) The applicant files an application for the exemption on
19 or before the 25th day after the mailing by the property
20 appraiser during the 2016 calendar year of the notice required
21 under s. 194.011(1), Florida Statutes;

22 (b) The applicant is qualified for the exemption; and

23 (c) The applicant produces sufficient evidence, as
24 determined by the property appraiser, which demonstrates that
25 the applicant was unable to apply for the exemption in a timely
26 manner or otherwise demonstrates extenuating circumstances that
27 warrant granting the exemption.

28 (3) If the property appraiser denies an application under
29 subsection (2), the applicant may file, pursuant to s.
30 194.011(3), Florida Statutes, a petition with the value
31 adjustment board which requests that the exemption be granted.
32 Such petition must be filed on or before the 25th day after the
33 mailing by the property appraiser during the 2016 calendar year
34 of the notice required under s. 194.011(1), Florida Statutes.
35 Notwithstanding s. 194.013, Florida Statutes, the eligible
36 servicemember is not required to pay a filing fee for such
37 petition. Upon review of the petition, the value adjustment
38 board may grant the exemption if the applicant is qualified for
39 the exemption and demonstrates extenuating circumstances, as



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40 determined by the board, which warrant granting the exemption.

41 (4) A servicemember may receive a refund of taxes paid for
42 the 2015 tax year if he or she was on qualifying deployments
43 during the 2014 and 2015 calendar years for more than 365 days.
44 The amount of the refund is equal to the taxes paid on the
45 servicemember's homestead in 2015 multiplied by the number of
46 days in excess of 365 that the servicemember was on qualifying
47 deployments during the 2014 and 2015 calendar years, divided by
48 365.

49 Section 3. This act shall take effect upon becoming a law,
50 and first applies to ad valorem tax rolls for 2016.

51
52 ===== T I T L E A M E N D M E N T =====

53 And the title is amended as follows:

54 Delete lines 10 - 12

55 and insert:

56 during the 2014 and 2015 calendar years; providing
57 procedures to appeal a denial by a property appraiser
58 of an application for such tax exemption; providing
59 refund procedures for servicemembers who were on
60 qualifying deployments for more than 365 days during
61 the 2014 and 2015 calendar years; providing for

By Senator Gaetz

1-00242-16

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1 A bill to be entitled
2 An act relating to an ad valorem tax exemption for
3 deployed servicemembers; amending s. 196.173, F.S.;
4 expanding the military operations that qualify a
5 servicemember deployed in support of such an operation
6 in the previous calendar year for an additional ad
7 valorem tax exemption; providing an extended deadline
8 and specifying procedures for filing an application
9 for such tax exemption for a qualifying deployment
10 during the 2014 calendar year; providing procedures to
11 appeal a denial by a property appraiser of an
12 application for such tax exemption; providing for
13 retroactive applicability; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (2) of section 196.173, Florida
19 Statutes, is amended to read:

20 196.173 Exemption for deployed servicemembers.—

21 (2) The exemption is available to servicemembers who were
22 deployed during the preceding calendar year on active duty
23 outside the continental United States, Alaska, or Hawaii in
24 support of any of the following operations:

25 (a) Operation Joint Guardian, which began on June 12, 1999.

26 (b) Operation Octave Shield, which began in 2000.

27 ~~(c)~~ (a) Operation Noble Eagle, which began on September 15,
28 2001.†

29 ~~(d)~~ (b) Operation Enduring Freedom, which began on October

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30 7, 2001.~~7~~31 ~~(c) Operation Iraqi Freedom, which began on March 19, 2003,~~
32 ~~and ended on August 31, 2010;~~33 (e) Operation Trans-Sahara Counterterrorism Partnership,
34 which began in June 2005.35 (f) Operation Nomad Shadow, which began in 2007.36 (g) Operation U.S. Airstrikes Al Qaeda in Somalia, which
37 began in January 2007.38 (h) Operation Objective Voice, which began in 2009.39 (i) Operation Georgia Deployment Program, which began in
40 August 2009.41 (j) Operation Copper Dune, which began in 2010.42 ~~(k)(d) Operation New Dawn, which began on September 1,~~
43 ~~2010, and ended on December 15, 2011.~~7~~ or~~44 ~~(l)(e) Operation Odyssey Dawn, which began on March 19,~~
45 ~~2011, and ended on October 31, 2011.~~46 (m) Operation Observant Compass, which began in October
47 2011.48 (n) Operation Juniper Shield, which began in 2013.49 (o) Operation Inherent Resolve, which began on August 8,
50 2014.51
52 The Department of Revenue shall notify all property appraisers
53 and tax collectors in this state of the designated military
54 operations.55 Section 2. Application deadline for additional ad valorem
56 tax exemption under s. 196.173, Florida Statutes, for 2014
57 qualifying deployments.-58 (1) Notwithstanding the application deadline in s.

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59 196.173(5), Florida Statutes, the deadline for an applicant to
60 file an application with the property appraiser for an
61 additional ad valorem tax exemption for a qualifying deployment
62 during the 2014 calendar year is June 1, 2016.

63 (2) If an application is not timely filed under subsection
64 (1), a property appraiser may grant the exemption if:

65 (a) The applicant files an application for the exemption on
66 or before the 25th day after the mailing by the property
67 appraiser during the 2016 calendar year of the notice required
68 under s. 194.011(1), Florida Statutes;

69 (b) The applicant is qualified for the exemption; and

70 (c) The applicant produces sufficient evidence, as
71 determined by the property appraiser, which demonstrates that
72 the applicant was unable to apply for the exemption in a timely
73 manner or otherwise demonstrates extenuating circumstances that
74 warrant granting the exemption.

75 (3) If the property appraiser denies an application under
76 subsection (2), the applicant may file, pursuant to s.
77 194.011(3), Florida Statutes, a petition with the value
78 adjustment board which requests that the exemption be granted.
79 Such petition must be filed on or before the 25th day after the
80 mailing by the property appraiser during the 2016 calendar year
81 of the notice required under s. 194.011(1), Florida Statutes.
82 Notwithstanding s. 194.013, Florida Statutes, the eligible
83 servicemember is not required to pay a filing fee for such
84 petition. Upon review of the petition, the value adjustment
85 board may grant the exemption if the applicant is qualified for
86 the exemption and demonstrates extenuating circumstances, as
87 determined by the board, which warrant granting the exemption.

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2016160__

88 Section 3. This act shall take effect upon becoming a law,
89 and first applies to ad valorem tax rolls for 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ

1st District

Committee Request

To: Senator Wilton Simpson, Chair
Community Affairs Committee

Subject: Committee Agenda Request

Date: October 8, 2015

I respectfully request that Senate Bill 160, Ad Valorem Tax Exemption for Deployed Servicemembers, be placed on the Community Affairs Committee agenda at your convenience. Thank you for your time and consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "Don Gaetz".

Senator Don Gaetz

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 416

INTRODUCER: Community Affairs Committee and Senator Flores

SUBJECT: Location of Utilities

DATE: October 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			TR	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 416 addresses the responsibility for the cost of relocating utility facilities in a public easement. Easements dedicated to the public for utilities are typically located along existing road or highway rights-of-way and are available for use by a variety of utility providers. Under the bill, the owner of a utility that requires relocation will be liable for relocation costs only if their lines and facilities are across, on or “*within*” the right-of-way, rather than “*along*” any right-of-way.

The bill also provides that a governmental authority must bear the cost of utility work required to eliminate an unreasonable interference if the utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the governmental authority, by dedication, transfer of fee, or otherwise.

According to the Florida Department of Transportation (DOT), CS/CS/SB 896, a similar bill from 2015, was expected to have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads. To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The bill, like CS/CS/SB 896 from 2015, is also expected to have an indeterminate negative fiscal impact on local governments that may now be responsible for the cost of utility relocations.

II. Present Situation:

Specific Grant of Authority to Counties to Issue Licenses to Utilities

Section 125.42, F.S., gives counties specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other public utilities, and television transmission lines located “under, on, over, across and along” any county roads or highways.¹ The statutory phrase “under, on, over, across and along” county roads or highways has been in the statute since 1947.²

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Lines

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property. DOT and local governmental entities³ prescribe and enforce reasonable rules or regulations related to the placement and maintenance of the utility lines along, across, or on any public road or rail corridor.⁴ “Utility” in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures that the statute refers to as a “utility.”⁵ Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.⁶

Payment of Moving or Removing Utilities and Exceptions

Since 1957, Florida law expressly has provided that in the event of widening, repair or reconstruction of a county’s public road or highway, the licensee, i.e., the utility provider, must move or remove the lines at no cost to the county.⁷ In 2009, that requirement was made subject to a provision in s. 337.403(1), F.S., relating to agreements entered into after July 1, 2009.⁸ In 2014, it was made subject to an additional requirement that the authority⁹ find the utility is “unreasonably interfering” with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.¹⁰

Additionally, beginning in 1957, Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road the authority finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension or expansion of a road.¹¹ In 1994, that law was amended

¹ Section 125.42, F.S.

² Ch. 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.

³ These are referred in ss. 337.401-337.404, F.S., as an “authority.” S. 337.401(1)(a), F.S.

⁴ Section 337.401, F.S.

⁵ Section 337.401(a), F.S.

⁶ See City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.

⁷ Ch. 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.

⁸ Ch. 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S.

⁹ “[A]uthority” means DOT and local governmental entities. Section 337.401(1), F.S.

¹⁰ Ch. 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.

¹¹ Ch. 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.

to include utilities placed upon, under, over, or along any publicly owned rail corridor.¹² Utility owners, upon 30 days' notice, must eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.¹³ The general rule remains that utilities bear the costs of relocating a utility unless governmental participation in such costs is authorized. Since 1987, numerous exceptions to that general rule have been statutorily carved out, and can be found in s. 337.403(1), F.S., as follows:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.¹⁴
- When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.¹⁵
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.¹⁶
- If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.¹⁷
- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation, the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.¹⁸
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears the cost of the necessary utility work.¹⁹
- An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
 - If the utility was physically located on the particular property before the authority acquired rights in the property,
 - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property, and
 - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility²⁰ or, pursuant to a 2014 amendment, after due diligence,

¹² Ch. 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.]

¹³ Section 337.403, F.S.

¹⁴ Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.

¹⁵ Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.

¹⁶ Ch. 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.

¹⁷ Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.

¹⁸ Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.

¹⁹ Ch. 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.

²⁰ Ch. 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g), F.S.

- the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.²¹
- If a municipally-owned or county-owned utility is located in a rural area of critical economic concern²² and DOT determines that the utility is unable, and will not be able within the next ten years to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.
 - If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the federal government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.²³

Utility Relocation under Common Law and the *Cape Coral* Decision

Legal scholarship has addressed the common law implications of utility relocation.²⁴ Generally, under common law, a utility will bear the costs of moving or relocating its utility lines or facilities if they are within the right-of-way or a public utility easement, unless there exists an agreement providing otherwise or a private easement pursuant to which the utility locates and runs its lines or facilities. A right-of-way differs from an easement. The term right-of-way “has been construed to mean ... a right of passage over the land of another It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement.”²⁵ An easement gives someone else a reserved right to use property in a specified manner,²⁶ but “does not involve title to or an estate in the land itself.”²⁷

In 2014, the Florida Second District Court of Appeal (DCA) ruled in *Lee County Electric Coop., Inc. v. City of Cape Coral* that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law.²⁸ That court found that, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, the common law principle governs.²⁹ This case involved a platted public utility easement on each

²¹ Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.

²² Section 288.0656(2)(d) defines “rural area of critical economic concern” as “a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.”

²³ Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. Section 337.403(1)(i), F.S.

²⁴ Michael L. Stokes, *Moving the Lines: The Common Law of Utility Relocation*, 45 Val. U.L. Rev. 457 (Winter, 2011).

²⁵ *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991).

²⁶ *Southeast Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) (“[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights.”).

²⁷ *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).

²⁸ *Lee County Electric Coop., Inc. v. City of Cape Coral*, 159 So. 3d 126, 130 (Fla. 2d DCA 2014), *review denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).

²⁹ *Id.*

side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment. The easement was “along” the public right-of-way and was dedicated *to the public*, not to any utility owner, for the purpose of furnishing utilities. No reserved right to use the property was granted to the Lee County Electric Coop by virtue of the platted public easement. The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility’s equipment if the municipality required the utility to do so. The Second DCA held that the utility would bear the burden of the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality’s expansion of an existing road.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 125.42, F.S., relating to licenses for water, sewage, gas, power, telephone, other public utilities, and television lines. The bill reduces a county’s authority to grant licenses for lines to only locations under, on, over, across, or within the right-of-way limits of a county highway or public road, as opposed to “under, on, over, across and along” such highways or roads. Specifically, the bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other public utilities, television lines, and other communications services³¹ is limited to those lines located within the right-of-way limits of any county roads or highways. Accordingly, this change narrows a county’s ability to grant licenses to construct such lines within a public easement, running along a road or highway but not within the actual right-of-way.

The bill also makes a conforming change, substituting a reference to ss. 337.403(1)(d) through (i), F.S., with ss. 337.403(1)(d) through (j), F.S., to correspond with the new exception set forth in Section 3 of the bill.

Section 2 amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors. The bill reduces the ability of defined government authorities to grant licenses to only locations “across, on, or within” the right-of-way limits of a county highway or public road, as opposed to “along, across, or on” such highways or roads. Specifically, the bill narrows the authority of DOT and local governmental entities to prescribe and enforce rules or regulations related to the placing and maintaining of a utility³² to only across, on, or within the right-of-way limits of any public road or publicly owned rail corridors.

³⁰ *Id.* at 133. In reaching this conclusion, the Second District distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned “a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property.” *Id.* at 129. The Second District in its opinion also distinguished an earlier Second District case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, without citing or discussing relevant cases or statutes, the court determined that the utility, which had a franchise agreement with the City, had a property right in the agreement, and held that the County had to pay the utility’s costs in moving its telephone lines located within a right-of-way of an alley dedicated to the City and which was within property the County was purchasing as part of a County building construction.

³¹ The bill adds “other communications services” to the list of utilities in current law.

³² Section 337.401(1)(a), F.S., provides that utilities include “electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section as the “utility”.”

By changing the language to “right-of-way,” the bill reduces the authority of DOT and local governments to prescribe and enforce rules and regulations regarding the placement and maintenance of utilities within a public easement. The bill also changes the expression “other structures referred to as a utility” to mean those structures referred to in ss. 337.401-337.404, F.S., instead of just those found in s. 337.401, F.S.

Section 3 amends s. 337.403, F.S., relating to alleviating an interference that a utility causes to a public road or publicly owned rail corridor. The bill limits the responsibility of utility providers to pay for relocating their lines and facilities under certain circumstances. Specifically, the bill limits the responsibility of a utility provider to pay for relocating a utility that is located upon, under, over or *within the right-of-way limits* of the road or rail corridor, rather than upon, under, over, or *along* the road or rail corridor.

Furthermore, if a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the governmental authority, by dedication, transfer of fee, or otherwise, the authority must bear the cost of the utility work required to eliminate an unreasonable interference. The bill also provides that if an authority is required to bear such a cost, the authority is required to pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

These changes overturn the results reached by the Second DCA in *Lee County Electric Cooperative, Inc. v. City of Cape Coral*, which held that the cost of relocating utilities from a public easement in the absence of a permit or other agreement is the responsibility of the utility owner.³³ Under the bill, if a utility is located in a public easement and no permit or agreement is in place to address relocation, the state or local government will be required to pay relocation costs because the utility is located *along* a public right-of-way.

The provisions extend beyond the issue before the court in the Lee County case. For example, current law defers to private property rights by requiring the state or local government to pay for relocation when a utility is located on a *private* easement, i.e., on property for which the utility has paid for the right to use or occupy. The bill’s provisions seemingly extend private property rights to public property by requiring the governmental entity to pay for utility relocation even when the governmental entity has purchased a *public* easement, i.e., property dedicated *to the public* in general, not to any specific utility owner, effectively bestowing a compensable property right to private users of a public easement, even when such users were granted the right to use the public property without compensation.

Section 4 provides that the Legislature finds that the bill fulfills an important state interest by clarifying a utility’s responsibility for relocation of its facilities.

Section 5 provides that the act shall take effect upon becoming a law.

³³ *Lee County Electric Coop., Inc.*, 159 So. 3d at 133.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill applies to all persons similarly situated, including the state and local governments. The bill includes a legislative finding that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would have an indeterminate positive impact on the private sector, depending upon the number of eligible reimbursements for relocation made to utilities by DOT, local governments, or other entities.

C. Government Sector Impact:

State and local governments would bear the cost of relocation if they require the relocation of a utility, with certain exceptions. State and local governments would be required to bear the cost of utility work when a utility is located within an existing and valid utility easement granted by recorded plat, regardless of how such land was subsequently acquired by the local government, even where the state or local government subsequently acquired the property by outright purchase.

While the extent is unknown, potential negative fiscal impacts appear to exist, given that utility facilities are located along the public right-of-way all over the state. The increased responsibility of state and local governments, and nonusers of utilities, to bear the cost of utility relocation previously borne by the utility owner and its users may delay or even prevent needed transportation improvements, particularly for local governments.

According to DOT, a similar bill from 2015 was expected to have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads.³⁴ To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The similar bill from 2015 was also expected to have an indeterminate negative fiscal impact on local governments, based on the number of situations in which local governments will be responsible for the cost of certain utility relocations.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.42, 337.401, and 337.403.

IX. Additional Information:

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

CS by Community Affairs on October 20, 2015:

Removes two provisions that prohibited a municipality or county from requiring a utility or a provider of communication services to provide proprietary maps of facilities that were previously subject to a permit from the authority. The bill also removes several provisions regarding the allocations of costs when relocation of a utility is required. Specifically, the bill removes a provision that required an authority to bear the cost of relocating a utility if the authority required the relocation of the utility for purposes other than an unreasonable interference with the use, maintenance, improvement, extension, or expansion of a publicly owned road or publicly owned rail corridor. The bill also removes a provision that required an entity other than the authority to bear the cost of relocating a utility if the relocation was required as a condition or result of a project by that entity. Furthermore, the bill removes several corresponding provisions relating to the impairment of the rights of a holder of a private railroad right-of-way; the obligations of a holder of a private railroad right-of-way; and contracts between an authority and a utility before October 1, 2015.

B. Amendments:

None.

³⁴ Florida Dep't of Transportation, *Legislative Bill Analysis of 2015 SB 896*, at 3 (Feb. 13, 2015).

³⁵ *Id.*

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) The board of county commissioners, with respect to



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11 property located without the corporate limits of any
12 municipality, is authorized to grant a license to any person or
13 private corporation to construct, maintain, repair, operate, and
14 remove lines for the transmission of water, sewage, gas, power,
15 telephone, other public utilities, ~~and~~ television, or other
16 communications services as defined in s. 202.11(1) under, on,
17 over, across, or within the right-of-way limits of ~~and along~~ any
18 county highway or any public road or highway acquired by the
19 county or public by purchase, gift, devise, dedication, or
20 prescription. However, the board of county commissioners shall
21 include in any instrument granting such license adequate
22 provisions:

23 (a) To prevent the creation of any obstructions or
24 conditions which are or may become dangerous to the traveling
25 public;

26 (b) To require the licensee to repair any damage or injury
27 to the road or highway by reason of the exercise of the
28 privileges granted in any instrument creating such license and
29 to repair the road or highway promptly, restoring it to a
30 condition at least equal to that which existed immediately prior
31 to the infliction of such damage or injury;

32 (c) Whereby the licensee shall hold the board of county
33 commissioners and members thereof harmless from the payment of
34 any compensation or damages resulting from the exercise of the
35 privileges granted in any instrument creating the license; and

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

38 (2) A license may be granted in perpetuity or for a term of
39 years, subject, however, to termination by the licensor, in the



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40 event the road or highway is closed, abandoned, vacated,
41 discontinued, or reconstructed.

42 (3) The board of county commissioners is authorized to
43 grant exclusive or nonexclusive licenses for the purposes stated
44 herein for television.

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

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

54 Section 2. Paragraph (a) of subsection (1) of section
55 337.401, Florida Statutes, is amended to read:

56 337.401 Use of right-of-way for utilities subject to
57 regulation; permit; fees.—

58 (1) (a) The department and local governmental entities,
59 referred to in this section and in ss. 337.402, 337.403, and
60 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
61 jurisdiction and control of public roads or publicly owned rail
62 corridors are authorized to prescribe and enforce reasonable
63 rules or regulations with reference to the placing and
64 maintaining ~~along~~, across, or on, or within the right-of-way
65 limits of any road or publicly owned rail corridors under their
66 respective jurisdictions any electric transmission, telephone,
67 telegraph, or other communications services lines; pole lines;
68 poles; railways; ditches; sewers; water, heat, or gas mains;



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69 pipelines; fences; gasoline tanks and pumps; or other structures
70 referred to in this section and in ss. 337.402, 337.403, and
71 337.404 as the "utility." The department may enter into a
72 permit-delegation agreement with a governmental entity if
73 issuance of a permit is based on requirements that the
74 department finds will ensure the safety and integrity of
75 facilities of the Department of Transportation; however, the
76 permit-delegation agreement does not apply to facilities of
77 electric utilities as defined in s. 366.02(2).

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

80 337.403 Interference caused by utility; expenses.—

81 (1) If a utility that is placed upon, under, over, or
82 within the right-of-way limits of ~~along~~ any public road or
83 publicly owned rail corridor is found by the authority to be
84 unreasonably interfering in any way with the convenient, safe,
85 or continuous use, or the maintenance, improvement, extension,
86 or expansion, of such public road or publicly owned rail
87 corridor, the utility owner shall, upon 30 days' written notice
88 to the utility or its agent by the authority, initiate the work
89 necessary to alleviate the interference at its own expense
90 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
91 be completed within such reasonable time as stated in the notice
92 or such time as agreed to by the authority and the utility
93 owner.

94 (a) If the relocation of utility facilities, as referred to
95 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
96 84-627, is necessitated by the construction of a project on the
97 federal-aid interstate system, including extensions thereof



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98 within urban areas, and the cost of the project is eligible and
99 approved for reimbursement by the Federal Government to the
100 extent of 90 percent or more under the Federal Aid Highway Act,
101 or any amendment thereof, then in that event the utility owning
102 or operating such facilities shall perform any necessary work
103 upon notice from the department, and the state shall pay the
104 entire expense properly attributable to such work after
105 deducting therefrom any increase in the value of a new facility
106 and any salvage value derived from an old facility.

107 (b) When a joint agreement between the department and the
108 utility is executed for utility work to be accomplished as part
109 of a contract for construction of a transportation facility, the
110 department may participate in those utility work costs that
111 exceed the department's official estimate of the cost of the
112 work by more than 10 percent. The amount of such participation
113 is limited to the difference between the official estimate of
114 all the work in the joint agreement plus 10 percent and the
115 amount awarded for this work in the construction contract for
116 such work. The department may not participate in any utility
117 work costs that occur as a result of changes or additions during
118 the course of the contract.

119 (c) When an agreement between the department and utility is
120 executed for utility work to be accomplished in advance of a
121 contract for construction of a transportation facility, the
122 department may participate in the cost of clearing and grubbing
123 necessary to perform such work.

124 (d) If the utility facility was initially installed to
125 exclusively serve the authority or its tenants, or both, the
126 authority shall bear the costs of the utility work. However, the



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127 authority is not responsible for the cost of utility work
128 related to any subsequent additions to that facility for the
129 purpose of serving others. For a county or municipality, if such
130 utility facility was installed in the right-of-way as a means to
131 serve a county or municipal facility on a parcel of property
132 adjacent to the right-of-way and if the intended use of the
133 county or municipal facility is for a use other than
134 transportation purposes, the obligation of the county or
135 municipality to bear the costs of the utility work shall extend
136 only to utility work on the parcel of property on which the
137 facility of the county or municipality originally served by the
138 utility facility is located.

139 (e) If, under an agreement between a utility and the
140 authority entered into after July 1, 2009, the utility conveys,
141 subordinates, or relinquishes a compensable property right to
142 the authority for the purpose of accommodating the acquisition
143 or use of the right-of-way by the authority, without the
144 agreement expressly addressing future responsibility for the
145 cost of necessary utility work, the authority shall bear the
146 cost of removal or relocation. This paragraph does not impair or
147 restrict, and may not be used to interpret, the terms of any
148 such agreement entered into before July 1, 2009.

149 (f) If the utility is an electric facility being relocated
150 underground in order to enhance vehicular, bicycle, and
151 pedestrian safety and in which ownership of the electric
152 facility to be placed underground has been transferred from a
153 private to a public utility within the past 5 years, the
154 department shall incur all costs of the necessary utility work.

155 (g) An authority may bear the costs of utility work



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156 required to eliminate an unreasonable interference when the
157 utility is not able to establish that it has a compensable
158 property right in the particular property where the utility is
159 located if:

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

162 2. The utility demonstrates that it has a compensable
163 property right in adjacent properties along the alignment of the
164 utility or, after due diligence, certifies that the utility does
165 not have evidence to prove or disprove that it has a compensable
166 property right in the particular property where the utility is
167 located; and

168 3. The information available to the authority does not
169 establish the relative priorities of the authority's and the
170 utility's interests in the particular property.

171 (h) If a municipally owned utility or county-owned utility
172 is located in a rural area of opportunity, as defined in s.
173 288.0656(2), and the department determines that the utility is
174 unable, and will not be able within the next 10 years, to pay
175 for the cost of utility work necessitated by a department
176 project on the State Highway System, the department may pay, in
177 whole or in part, the cost of such utility work performed by the
178 department or its contractor.

179 (i) If the relocation of utility facilities is necessitated
180 by the construction of a commuter rail service project or an
181 intercity passenger rail service project and the cost of the
182 project is eligible and approved for reimbursement by the
183 Federal Government, then in that event the utility owning or
184 operating such facilities located by permit on a department-



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185 owned rail corridor shall perform any necessary utility
186 relocation work upon notice from the department, and the
187 department shall pay the expense properly attributable to such
188 utility relocation work in the same proportion as federal funds
189 are expended on the commuter rail service project or an
190 intercity passenger rail service project after deducting
191 therefrom any increase in the value of a new facility and any
192 salvage value derived from an old facility. In no event shall
193 the state be required to use state dollars for such utility
194 relocation work. This paragraph does not apply to any phase of
195 the Central Florida Commuter Rail project, known as SunRail.

196 (j) If a utility is lawfully located within an existing and
197 valid utility easement granted by recorded plat, regardless of
198 whether such land was subsequently acquired by the authority by
199 dedication, transfer of fee, or otherwise, the authority must
200 bear the cost of the utility work required to eliminate an
201 unreasonable interference. The authority shall pay the entire
202 expense properly attributable to such work after deducting any
203 increase in the value of a new facility and any salvage value
204 derived from an old facility.

205 Section 4. The Legislature finds that a proper and
206 legitimate state purpose is served by clarifying a utility's
207 responsibility for relocating its facilities within a utility
208 easement granted by recorded plat. Therefore, the Legislature
209 determines and declares that this act fulfills an important
210 state interest.

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

212
213 ===== T I T L E A M E N D M E N T =====



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214 And the title is amended as follows:

215 Delete everything before the enacting clause
216 and insert:

217 A bill to be entitled

218 An act relating to the location of utilities; amending
219 s. 125.42, F.S.; revising the circumstances under
220 which a board of county commissioners is authorized to
221 grant to a person or private corporation a license for
222 specified projects related to lines for the
223 transmission of certain public utilities and
224 communication services; conforming a cross-reference;
225 amending s. 337.401, F.S.; authorizing the Department
226 of Transportation and certain local governmental
227 entities to prescribe and enforce rules or regulations
228 regarding the placement and maintenance of specified
229 structures and lines within the right-of-way limits of
230 roads or publicly owned rail corridors under their
231 respective jurisdictions; conforming cross-references;
232 amending s. 337.403, F.S.; specifying that the owner
233 of a utility located within certain right-of-way
234 limits must initiate and bear the cost necessary to
235 alleviate any interference to the use of certain
236 public roads or rail corridors under certain
237 circumstances; conforming a cross-reference; requiring
238 the authority to bear the cost of the utility work
239 necessary to eliminate an unreasonable interference if
240 the utility is lawfully located within a certain
241 utility easement, subject to certain deductions;
242 providing findings of an important state interest;



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243

providing an effective date.

By Senator Flores

37-00427A-16

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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.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10-20-15

Meeting Date

SB 416

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/20/15

Meeting Date

SB 0416

Bill Number (if applicable)

Topic

Name Frank Walker

Job Title VP, Govt. Affairs

Address 136 E. Bronough St.

Street

Tallahassee

City

FL

State

32312

Zip

Phone (850) 661-1200

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/1/15
Meeting Date

416
Bill Number (if applicable)

Topic Utilities / Relocation

Name Charles Dudley

Amendment Barcode (if applicable)

Job Title General Counsel, FL Cable Telecom Assoc.

Address 108 S. Monroe St.

Phone 2081 0024

City Tall. State FL Zip 32301

Email Cdudley@FlaPartners.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FCTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/20/15

Meeting Date

416

Bill Number (if applicable)

Topic Location of Utilities

Amendment Barcode (if applicable)

Name Jim Smith

Job Title Director Government Affairs

Address 315 South Calhoun Street, Suite 500

Phone 850-599-1779

Street

Tallahassee

FL

32301

City

State

Zip

Email James.Smith@centurylink.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing CenturyLink

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

416
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

Topic Utility Rele

Name ERIC POOLE

Job Title Asst Legis Dir

Address 100 S. Monroe

Phone 9724300

City Tall FL

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc. Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/20/15
Meeting Date

416
Bill Number (if applicable)

505366
Amendment Barcode (if applicable)

Topic Utility Relocation

Name J.C. Florey

Job Title VP Gov Affairs

Address 150 S. Monroe
Street

Phone 850-577-5560

Tallahassee FL 32301
City State Zip

Email JF323W@att.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AT&T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/20/2015
Meeting Date

416
Bill Number (if applicable)
505366
Amendment Barcode (if applicable)

Topic COMMUNICATIONS - RELOCATION OF FACILITIES

Name TRACY HATCH

Job Title GENERAL ATTORNEY

Address 150 S. MONROE SUITE 400
Street

Phone 850-577-5508

TALLAHASSEE FL 32301
City State Zip

Email th9467@afl.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AT&T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

416
Bill Number (if applicable)

Topic Utility Relocation

505366
Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Asst. Legis. Dir.

Address 100 Monroe St
Street

Phone 922 4300

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc. Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

10/20/2015

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

416

Bill Number (if applicable)

505366

Amendment Barcode (if applicable)

Topic Location of Utilities

Name DAN PETERSON

Job Title Director - Center for Property Rights

Address 100 N. Duval St

Phone 407 758 2491

City State Zip

Email dpeterson@jamesmadison.com

Speaking: [X] For [] Against [] Information

Waive Speaking. [X] In Support [] Against (The Chair will read this information into the record.)

Representing JAMES MADISON INSTITUTE

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10.20.15

Meeting Date

SB 414

Bill Number (if applicable)

505344

Amendment Barcode (if applicable)

Topic LOCATION OF UTILITIES

Name MEGAN SIRJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. Box 1700

Street

TALLAHASSEE FL 32302

City

State

Zip

Phone 850.701.3655

Email MSIRJANESAMPLES@
FLCITIES.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/21/15 Meeting Date

4116

Bill Number (if applicable)

505344

Amendment Barcode (if applicable)

Topic Utility Refraction

Name Gil Ziffer

Job Title Tald. City Commissioner / 2nd VP FL League of Cities

Address 301 S. Adams St. Street

speaking on amendment
Phone 850-509-7886

TALL FL 32601 City State Zip

Email gil.ziffer@talgoov.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing City of Tallahassee, FL League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: October 9, 2015

I respectfully request that **Senate Bill #416**, relating to Location of Utilities, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 190

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Conservation Easements

DATE: October 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 190 provides that once an original application for ad valorem tax exemption has been granted under s. 196.26, F.S., the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

II. Present Situation:

Property Valuation in Florida

Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”¹ The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value or what a willing buyer would pay a willing seller for the property in an arms-length transaction.²

¹ FLA. CONST. art. VII, s. 2.

² See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.³ Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of its character or use.⁴ Land used for conservation purposes must be assessed solely on the basis of character or use.⁵ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁶ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 or older.⁷ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁸ Certain working waterfront property is assessed based upon the property's current use.⁹

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by the Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹⁰

Conservation Easements

Section 704.06(1), F.S., provides that a conservation easement is "a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or other significance, or maintaining existing land uses..." Subsection (1) also provides a list of activities which must be prohibited or limited by the conservation easement.

Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will or other instrument executed by or on behalf of the property owner.¹¹ Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust that meets the statutory purposes of a conservation easement.¹² Conservation easements run with the land

³ The constitutional provisions in Art. VII, section 4 of the Florida Constitution are implemented in Part II of ch. 193, F.S.

⁴ FLA. CONST. art. VII, s. 4(a).

⁵ FLA. CONST. art. VII, s. 4(b).

⁶ FLA. CONST. art. VII, s. 4(e).

⁷ FLA. CONST. art. VII, s. 4(f).

⁸ FLA. CONST. art. VII, s. 4(i).

⁹ FLA. CONST. art. VII, s. 4(j).

¹⁰ FLA. CONST. art. VII, ss. 3 and 6.

¹¹ Section 704.06(2).

¹² Section 704.06(3).

and are binding on all subsequent owners.¹³ Conservation easements must be recorded in the same manner as any other instrument affecting the title to real property.¹⁴

Amendment 4 to the Florida Constitution (2008)

In November 2008, Florida's voters amended the Florida Constitution to provide an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.¹⁵ The amendment also provided that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use, subject to conditions, limitations, and reasonable definitions as provided by general law.¹⁶ The amendment was proposed by the Tax and Budget Reform Commission and approved by 68 percent of the voters.

Conservation Easement Exemption

The 2009 Legislature, in its implementing legislation for Constitutional Amendment 4, provided for exemptions from ad valorem taxation for lands dedicated in perpetuity for conservation purposes. Section 196.26(2), F.S. states that:

Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation." The phrase "dedicated in perpetuity" is defined as "land encumbered by an irrevocable, perpetual conservation easement."¹⁷

Section 196.26(4), F.S. goes on to state that:

Land that comprises less than 40 contiguous acres does not qualify for the exemption provided in this section unless in addition to meeting the other requirements of this section, the use of the land for conservation purposes is determined by the Acquisition and Restoration Council created in s. 259.035 to fulfill a clearly delineated state conservation policy and yield a significant public benefit. In making its determination of public benefit, the Acquisition and Restoration Council must give particular consideration to land that:

- (a) Contains a natural sinkhole or natural spring that serves a water recharge or production function;
- (b) Contains a unique geological feature;
- (c) Provides habitat for endangered or threatened species;
- (d) Provides nursery habitat for marine and estuarine species;
- (e) Provides protection or restoration of vulnerable coastal areas;
- (f) Preserves natural shoreline habitat; or

¹³ Section 704.06(4).

¹⁴ Section 704.06(5).

¹⁵ FLA. CONST. art. VII, s. 3(f).

¹⁶ FLA. CONST. art. VII, s. 4(b).

¹⁷ Section 196.26(1)(d).

(g) Provides retention of natural open space in otherwise densely built-up areas.

Any land approved by the Acquisition and Restoration Council under this subsection must have a management plan and a designated manager who will be responsible for implementing the management plan.

The statute further requires that the conservation easement that serves as the basis for the exemption must include baseline documentation as to the natural values to be protected on the land, and that structures and other improvements situated on lands receiving the exemption and the land immediately surrounding such buildings and improvements must be assessed separately.¹⁸

Annual Application for Exemption

Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which the exemption is claimed and certifying its ownership and use.¹⁹ However, a property owner may be exempt from the annual application,²⁰ a property appraiser may modify the annual application requirement,²¹ and a county may waive the annual application requirement.²² Failure to timely file an application constitutes a waiver of the exemption privilege for that year.²³ An exemption from annual application currently exists for the following properties²⁴:

- Houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, burial grounds and tombs owned by houses of public worship, individually owned burial rights not held for speculation, or other such property not rented or hired out for other than religious or educational purposes at any time;
- Household goods and personal effects of permanent resident of this state; and
- Property of the state or any county, any municipality, any school district, or community college district thereof.

Use-based Taxation for Conservation Easements

Section 193.501, F.S., requires a property owner to file an annual application with a property appraiser for the assessment of any land subject to a conservation easement as described in s. 704.06 for a term not less than 10 years. Under this section, the land is assessed at its present use rather than its best use. This allows the land to be assessed at a reduced value, but it is not an exemption. Section 193.501, F.S. provides that “the property appraiser, in valuing such land for tax purposes, shall consider no factors other than those relative to its value for the present use, as restricted by any conveyance or covenant under this section.” If a conservation easement is for a

¹⁸ Section 196.26(5) and (6).

¹⁹ Section 196.011(1).

²⁰ Section 196.011(3).

²¹ Section 196.011(4).

²² Section 196.011(9)(a).

²³ Section 196.011(1).

²⁴ Section 196.011(3).

term less than 10 years, then the land is assessed under s. 193.011, F.S., and does not receive preferential tax treatment.

III. Effect of Proposed Changes:

Section 1 amends s. 196.011, F.S., by providing that once an original application for ad valorem tax exemption has been granted, the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A property owner is relieved of the burden of applying annually to maintain their tax exemption.

C. Government Sector Impact:

A county property appraiser may see a reduction in the number of renewal applications received.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.011 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on October 20, 2015:

Clarifies that a property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

- B. **Amendments:**

None.



418604

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (6) of section
196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(6)

(b) Once an original application for tax exemption has been
granted under s. 196.26, the property owner is not required to
file a renewal application until ~~in each succeeding year on or~~



418604

11 ~~before February 1, the property appraiser shall mail a renewal~~
12 ~~application to the applicant on a form prescribed by the~~
13 ~~Department of Revenue. The applicant must certify on the form~~
14 ~~that the use of the property no longer complies with the~~
15 ~~restrictions and requirements of the conservation easement. The~~
16 ~~form shall include a statement that the exemption granted under~~
17 ~~s. 196.26 will not be renewed unless the application is returned~~
18 ~~to the property appraiser.~~

19 Section 2. This act shall take effect on July 1, 2016.
20

By Senator Hutson

6-00142-16

2016190__

1 A bill to be entitled

2 An act relating to conservation easements; amending s.
3 196.011, F.S.; providing that it is not necessary to
4 make annual application for exemption of a
5 conservation easement; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (3) of section 196.011, Florida
10 Statutes, is amended to read:

11 196.011 Annual application required for exemption.—

12 (3) It is ~~shall~~ not ~~be~~ necessary to make annual application
13 for exemption on houses of public worship, the lots on which
14 they are located, personal property located therein or thereon,
15 parsonages, burial grounds and tombs owned by houses of public
16 worship, individually owned burial rights not held for
17 speculation, or other such property not rented or hired out for
18 other than religious or educational purposes at any time;
19 household goods and personal effects of permanent residents of
20 this state; ~~and~~ property of the state or any county, any
21 municipality, any school district, or community college district
22 thereof; and a conservation easement as defined in s. 704.06.

23 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice
Children, Families, and Elder Affairs
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Environmental Preservation and Conservation

SENATOR TRAVIS HUTSON

6th District

September 17, 2015

The Honorable Wilton Simpson
Chairman
Senate Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Simpson:

I would like to respectfully request that my bill, SB 190 – Conservation Easements, be placed on the Committee on Community Affairs' agenda for the week of October 5, 2015.

Currently, holders of perpetual conservation easements are required to file an annual application with the Tax Collector of the county in which the property is located. SB 190 seeks to remove this requirement and allow for holders of conservation easements to file only once.

Thank you in advance for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Travis Hutson".

Senator Travis Hutson
District 6

REPLY TO:

- 4875 Palm Coast Parkway, NW, Suite 5, Palm Coast, Florida 32137 (386) 446-7610 FAX: (888) 263-3475
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 10/20/2015 12:33:43 PM

Ends: 10/20/2015 12:54:06 PM Length: 00:20:24

12:34:04 PM Quorum present
12:34:50 PM Senate Bill 416
12:34:59 PM Senator Flores
12:36:03 PM Location of Utilities
12:36:41 PM Questions
12:36:58 PM Senator Hutson with a question
12:37:42 PM Senator Flores with response
12:38:10 PM Amendment 505366 Senator Brandes
12:38:29 PM Questions
12:38:36 PM Speaker cards
12:39:02 PM Gil Ziffer City of Tallahassee, FL League of Cities
12:40:00 PM Questions
12:40:12 PM Senator Brandes with a comment
12:40:25 PM Senator Brandes continues
12:40:26 PM Megan Samples, FL League of Cities
12:40:42 PM Senator Simpson asks for questions
12:41:49 PM Questions
12:41:57 PM Senator Simpson with a comment
12:42:26 PM Dan Peterson, James Madison Institute
12:44:32 PM Questions
12:44:48 PM Eric Poole, FL Association of Counties
12:45:51 PM Tracy Hatch, AT&T
12:47:29 PM J.C. Flores, AT&T
12:47:33 PM Questions
12:47:38 PM Senator Brandes recognized to close
12:47:42 PM Amendment adopted
12:47:48 PM Back on Bill as Amended
12:47:49 PM Eric Poole, FL Association of Counties
12:48:03 PM Jim Smith, CenturyLink
12:48:14 PM Charles Dudley, FL Cable Telecom. Association
12:48:21 PM Frank Walker, FL Chamber of Commerce
12:48:36 PM Brewster Bevis, Assoc. Industries of FL
12:48:38 PM Questions
12:48:40 PM No Debate
12:48:47 PM Senator Flores recognized to Close
12:49:28 PM Call role for CS/SB 416
12:49:48 PM CS/SB 416 reported favorably
12:49:55 PM SB 160, Senator Gaetz
12:50:37 PM Questions
12:50:51 PM Amendment 267652
12:50:58 PM Technical Amendment
12:51:15 PM Senator Brandes with comment
12:51:32 PM Questions
12:51:35 PM No speaker cards
12:51:39 PM Discussion or Debate
12:51:46 PM Amendment adopted
12:51:50 PM Back on Bill as Amended
12:51:55 PM No speaker cards
12:52:03 PM Call role
12:52:16 PM CS/SB 160 reported favorably
12:52:30 PM SB 190, Senator Hutson
12:52:37 PM Conservation Easements

12:52:52 PM Questions
12:53:04 PM Amendment 418604 by Senator Hutson
12:53:07 PM Technical Amendment
12:53:14 PM No speaker cards
12:53:24 PM Discussion or Debate
12:53:27 PM Amendment adopted
12:53:31 PM Back on Bill as Amended
12:53:34 PM No Debate on Bill
12:53:46 PM Call Role for CS/SB190
12:53:56 PM CS/SB 190 reported favorably
12:53:59 PM Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Fiscal Policy, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Communications, Energy, and Public Utilities
Community Affairs
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR ROB BRADLEY

7th District

MEMORANDUM

Chair: Senator Wilton Simpson

From: Senator Rob Bradley

Subject: Excused Absence

Date: October 20, 2015

A handwritten signature of Senator Rob Bradley, consisting of stylized initials "RB" enclosed in an oval.

Due to a scheduling conflict, I was unable to attend today's meeting of the Committee on Community Affairs. I humbly request an excused absence from today's meeting.

Had I been present, I would have voted favorably for the following bills:

- SB 160
- SB 416
- SB 190

Thanks so very much for tending to my request.

Cc: Mr. Tom Yeatman
Staff Director Community Affairs

REPLY TO:

- 2233 Park Avenue, Suite 303, Orange Park, Florida 32073 (904) 278-2085
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5007

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore