

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 Communications, Energy, and Public Utilities Committee

BILL: SB 1934

INTRODUCER: Senator Evers

SUBJECT: Utility Right-of-Way Relocation

DATE: April 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Pre-meeting
2.			TR	
3.			CA	
4.			BC	
5.				
6.				

I. Summary:

The bill clarifies that a utility is required to initiate the relevant work to remove or relocate a facility upon 30 days written notice from a transportation authority, not to complete it within that time. It also creates new circumstances under which a transportation authority is responsible for the cost of removal or relocation of a utility facility.

The bill takes effect July 1, 2011.

The bill substantially amends section 337.403 of the Florida Statutes.

II. Present Situation:

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when the utility interferes with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The utility, upon 30 days written notice, is required to remove or relocate the utility at its own expense subject to the following exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the Florida Department of Transportation (FDOT) pays for the removal or relocation with federal funds;
- Where the work is done pursuant to joint agreement between FDOT and the utility and the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent, FDOT payment is limited to the difference between the official estimate of the cost for all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract;

- When the work takes place before transportation construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the utility work;
- When the utility was initially installed to serve only FDOT, its tenants, or both and its relocation is necessary for the construction of a transportation project, FDOT is responsible for the cost of relocating the utility. (For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line.);
- If the utility has conveyed, subordinated, or relinquished 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 of the utility, the authority bears the cost of such removal or relocation; and
- If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which 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 all costs of the relocation.

Generally, the 30-day relocation provision has been construed as a notice provision, and the utility does not need to be removed or relocated within 30 days. Often, an authority and a utility owner negotiate a period of time to reasonably accommodate the relocation and removal of the utility.

III. Effect of Proposed Changes:

The bill amends s. 337.403, F.S., to clarify that a utility is required to initiate the relevant work upon 30 days written notice, not to complete it within that time.

It also creates new circumstances under which a transportation authority is responsible for the cost of removal or relocation of a utility facility.

- If the transportation authority acquires property on which a utility is legally located, the authority bears the costs of removing or relocating that utility.
- For any permit issued in 1972 by FDOT to any utility when the utility was in possession of the permitted property and transferred its interest to FDOT and if master agreements between FDOT and the utility were entered into before any permits were issued, FDOT must pay for any relocation expenses affecting a compensable interest of the utility, notwithstanding any permit, statutory, or contractual language to the contrary. This provisions applies only to utilities located on the Turnpike Homestead extension and if the utility transferred its interest to the FDOT without compensation for future relocation expenses.

The bill takes effect July 1, 2011.

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:

None.

C. Government Sector Impact:

Indeterminate; the bill increases the number of instances in which FDOT may be responsible for the cost of relocating or removing utilities, however, the additional number cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.