

By the Committee on Community Affairs; and Senator Brandes

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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.; authorizing the board of county
4 commissioners to grant a license to work on or operate
5 communications services within the right-of-way limits
6 of certain county or public highways or roads;
7 conforming a cross-reference; amending s. 337.401,
8 F.S.; authorizing the Department of Transportation and
9 certain local governmental entities to prescribe and
10 enforce rules or regulations regarding placing and
11 maintaining specified structures within the right-of-
12 way limits of roads or publicly owned rail corridors
13 under their respective jurisdictions; prohibiting a
14 municipality or county from requiring a utility to
15 provide proprietary maps of facilities under certain
16 circumstances; prohibiting a municipality or county
17 from requiring a provider of communications services
18 to provide proprietary maps of facilities under
19 certain circumstances; amending s. 337.403, F.S.;
20 requiring a utility owner, under certain
21 circumstances, to initiate at its own expense the work
22 necessary to alleviate an interference to a public
23 road or publicly owned rail corridor which is caused
24 by a utility if it is placed within the right-of-way
25 limits of the public road or publicly owned rail
26 corridor; requiring an authority or an entity other
27 than the authority to bear the costs of relocating a
28 utility in certain circumstances; requiring the
29 authority to bear the cost of the utility work

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30 necessary to eliminate an unreasonable interference if
31 the utility is located within a certain utility
32 easement; conforming a cross-reference; providing
33 legislative findings; providing an effective date.
34

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

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

39 125.42 Water, sewage, gas, power, telephone, other utility,
40 and television lines within the right-of-way limits of ~~along~~
41 county roads and highways.—

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

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

57 (b) To require the licensee to repair any damage or injury
58 to the road or highway by reason of the exercise of the

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59 privileges granted in any instrument creating such license and
60 to repair the road or highway promptly, restoring it to a
61 condition at least equal to that which existed immediately prior
62 to the infliction of such damage or injury;

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

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

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

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

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

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

85 Section 2. Paragraph (a) of subsection (1), subsection (2),
86 and paragraph (b) of subsection (3) of section 337.401, Florida
87 Statutes, are amended to read:

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88 337.401 Use of right-of-way for utilities subject to
89 regulation; permit; fees.—

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

110 (2) The authority may grant to any person who is a resident
111 of this state, or to any corporation which is organized under
112 the laws of this state or licensed to do business within this
113 state, the use of a right-of-way for the utility in accordance
114 with such rules or regulations as the authority may adopt. No
115 utility shall be installed, located, or relocated unless
116 authorized by a written permit issued by the authority. However,

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

129 (3)

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

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146 facilities where such facilities have been previously subject to
147 a permit from the authority.

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

150 337.403 Interference caused by utility; expenses.—

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

169 (a) If the relocation of utility facilities, as referred to
170 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
171 84-627, is necessitated by the construction of a project on the
172 federal-aid interstate system, including extensions thereof
173 within urban areas, and the cost of the project is eligible and
174 approved for reimbursement by the Federal Government to the

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175 extent of 90 percent or more under the Federal Aid Highway Act,
176 or any amendment thereof, ~~then in that event~~ the utility owning
177 or operating such facilities shall perform any necessary work
178 upon notice from the department, and the state shall pay the
179 entire expense properly attributable to such work after
180 deducting therefrom any increase in the value of a new facility
181 and any salvage value derived from an old facility.

182 (b) When a joint agreement between the department and the
183 utility is executed for utility work to be accomplished as part
184 of a contract for construction of a transportation facility, the
185 department may participate in those utility work costs that
186 exceed the department's official estimate of the cost of the
187 work by more than 10 percent. The amount of such participation
188 is limited to the difference between the official estimate of
189 all the work in the joint agreement plus 10 percent and the
190 amount awarded for this work in the construction contract for
191 such work. The department may not participate in any utility
192 work costs that occur as a result of changes or additions during
193 the course of the contract.

194 (c) When an agreement between the department and utility is
195 executed for utility work to be accomplished in advance of a
196 contract for construction of a transportation facility, the
197 department may participate in the cost of clearing and grubbing
198 necessary to perform such work.

199 (d) If the utility facility was initially installed to
200 exclusively serve the authority or its tenants, or both, the
201 authority shall bear the costs of the utility work. However, the
202 authority is not responsible for the cost of utility work
203 related to any subsequent additions to that facility for the

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204 purpose of serving others. For a county or municipality, if such
205 utility facility was installed in the right-of-way as a means to
206 serve a county or municipal facility on a parcel of property
207 adjacent to the right-of-way and if the intended use of the
208 county or municipal facility is for a use other than
209 transportation purposes, the obligation of the county or
210 municipality to bear the costs of the utility work shall extend
211 only to utility work on the parcel of property on which the
212 facility of the county or municipality originally served by the
213 utility facility is located.

214 (e) If, under an agreement between a utility and the
215 authority entered into after July 1, 2009, the utility conveys,
216 subordinates, or relinquishes a compensable property right to
217 the authority for the purpose of accommodating the acquisition
218 or use of the right-of-way by the authority, without the
219 agreement expressly addressing future responsibility for the
220 cost of necessary utility work, the authority shall bear the
221 cost of removal or relocation. This paragraph does not impair or
222 restrict, and may not be used to interpret, the terms of any
223 such agreement entered into before July 1, 2009.

224 (f) If the utility is an electric facility being relocated
225 underground in order to enhance vehicular, bicycle, and
226 pedestrian safety and in which ownership of the electric
227 facility to be placed underground has been transferred from a
228 private to a public utility within the past 5 years, the
229 department shall incur all costs of the necessary utility work.

230 (g) An authority may bear the costs of utility work
231 required to eliminate an unreasonable interference when the
232 utility is not able to establish that it has a compensable

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233 property right in the particular property where the utility is
234 located if:

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

237 2. The utility demonstrates that it has a compensable
238 property right in adjacent properties along the alignment of the
239 utility or, after due diligence, certifies that the utility does
240 not have evidence to prove or disprove that it has a compensable
241 property right in the particular property where the utility is
242 located; and

243 3. The information available to the authority does not
244 establish the relative priorities of the authority's and the
245 utility's interests in the particular property.

246 (h) If a municipally owned utility or county-owned utility
247 is located in a rural area of critical economic concern, as
248 defined in s. 288.0656(2), and the department determines that
249 the utility is unable, and will not be able within the next 10
250 years, to pay for the cost of utility work necessitated by a
251 department project on the State Highway System, the department
252 may pay, in whole or in part, the cost of such utility work
253 performed by the department or its contractor.

254 (i) If the relocation of utility facilities is necessitated
255 by the construction of a commuter rail service project or an
256 intercity passenger rail service project and the cost of the
257 project is eligible and approved for reimbursement by the
258 Federal Government, then in that event the utility owning or
259 operating such facilities located by permit on a department-
260 owned rail corridor shall perform any necessary utility
261 relocation work upon notice from the department, and the

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262 department shall pay the expense properly attributable to such
263 utility relocation work in the same proportion as federal funds
264 are expended on the commuter rail service project or an
265 intercity passenger rail service project after deducting
266 therefrom any increase in the value of a new facility and any
267 salvage value derived from an old facility. In no event shall
268 the state be required to use state dollars for such utility
269 relocation work. This paragraph does not apply to any phase of
270 the Central Florida Commuter Rail project, known as SunRail.

271 (j) If a utility is located within an existing and valid
272 utility easement granted by recorded plat, regardless of whether
273 such land was subsequently acquired by the authority by
274 dedication, transfer of fee, or otherwise, the authority shall
275 bear the cost of the utility work required to eliminate an
276 unreasonable interference.

277 Section 4. The Legislature finds that a proper and
278 legitimate state purpose is served by clarifying a utility's
279 responsibility for relocating its facilities within the right-
280 of-way or within a utility easement granted by recorded plat.
281 Therefore, the Legislature determines and declares that this act
282 fulfills an important state interest.

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