

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Ingram offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

9 125.42 Water, sewage, gas, power, telephone, other utility,
 10 and television lines within the right-of-way limits of along
 11 county roads and highways.—

12 (1) The board of county commissioners, with respect to
 13 property located without the corporate limits of any
 14 municipality, is authorized to grant a license to any person or
 15 private corporation to construct, maintain, repair, operate, and
 16 remove lines for the transmission of water, sewage, gas, power,
 17 telephone, other public utilities, and television, or other

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18 communications services as defined in s.202.11 under, on, over,
19 across or within the right-of-way limits of and along any county
20 highway or any public road or highway acquired by the county or
21 public by purchase, gift, devise, dedication, or prescription.
22 However, the board of county commissioners shall include in any
23 instrument granting such license adequate provisions:

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

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

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

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

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

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

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

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

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

58 337.401 Use of right-of-way for utilities subject to
59 regulation; permit; fees.—

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

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

80 (2) The authority may grant to any person who is a resident
81 of this state, or to any corporation which is organized under
82 the laws of this state or licensed to do business within this
83 state, the use of a right-of-way for the utility in accordance
84 with such rules or regulations as the authority may adopt. No
85 utility shall be installed, located, or relocated unless
86 authorized by a written permit issued by the authority. However,
87 for public roads or publicly owned rail corridors under the
88 jurisdiction of the department, a utility relocation schedule
89 and relocation agreement may be executed in lieu of a written
90 permit. The permit shall require the permitholder to be
91 responsible for any damage resulting from the issuance of such
92 permit. In exercising its authority over a utility under this
93 section, a municipality or county may not require a utility to

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94 provide proprietary maps of facilities where such facilities
95 have been previously subject to a permit from the authority.

96 The authority may initiate injunctive proceedings as provided in
97 s. 120.69 to enforce provisions of this subsection or any rule
98 or order issued or entered into pursuant thereto.

99 (3)

100 (b) Registration described in paragraph (a) does not
101 establish a right to place or maintain, or priority for the
102 placement or maintenance of, a communications facility in roads
103 or rights-of-way of a municipality or county. Each municipality
104 and county retains the authority to regulate and manage
105 municipal and county roads or rights-of-way in exercising its
106 police power. Any rules or regulations adopted by a municipality
107 or county which govern the occupation of its roads or rights-of-
108 way by providers of communications services must be related to
109 the placement or maintenance of facilities in such roads or
110 rights-of-way, must be reasonable and nondiscriminatory, and may
111 include only those matters necessary to manage the roads or
112 rights-of-way of the municipality or county. In exercising its
113 authority over providers of communications services under this
114 section, a municipality or county may not require a provider of
115 communications services to provide proprietary maps of
116 facilities where such facilities have been previously subject to
117 a permit from the authority.

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

121 337.403 Interference caused by utility; expenses.—

122 (1) If a utility that is placed upon, under, over, or
123 within the right-of-way limits of along any public road or
124 publicly owned rail corridor is found by the authority to be
125 unreasonably interfering in any way with the convenient, safe,
126 or continuous use, or the maintenance, improvement, extension,
127 or expansion, of such public road or publicly owned rail
128 corridor, the utility owner shall, upon 30 days' written notice
129 to the utility or its agent by the authority, initiate the work
130 necessary to alleviate the interference at its own expense
131 except as provided in paragraphs (a)-(j) (a)-(i). The work must
132 be completed within such reasonable time as stated in the notice
133 or such time as agreed to by the authority and the utility
134 owner. If an authority requires the relocation of a utility for
135 purposes not described in this subsection, and the utility owner
136 is authorized by state law or common law or state or local
137 agreement to place facilities in the public rights-of-way, the
138 authority shall bear the cost of relocating the utility. If the
139 relocation is required as a condition or result of a project by
140 an entity other than an authority, then and except to the extent
141 such relocation would otherwise be required in connection with a
142 transportation improvement identified in the authority's capital
143 improvement schedule and scheduled for construction within five
144 years, the entity other than the authority shall bear the costs

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145 of relocating the utility. Nothing in this subsection shall
146 impair any rights of the holder of any private railroad right-
147 of-way or obligate such holder of any private railroad right-of-
148 way to bear the cost of relocation in such railroad right-of-
149 way, subject to any agreement between the holder of the private
150 railroad right-of-way and a utility that otherwise allocates
151 such relocation cost.

152 (a) If the relocation of utility facilities, as referred to
153 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
154 84-627, is necessitated by the construction of a project on the
155 federal-aid interstate system, including extensions thereof
156 within urban areas, and the cost of the project is eligible and
157 approved for reimbursement by the Federal Government to the
158 extent of 90 percent or more under the Federal Aid Highway Act,
159 or any amendment thereof, then in that event the utility owning
160 or operating such facilities shall perform any necessary work
161 upon notice from the department, and the state shall pay the
162 entire expense properly attributable to such work after
163 deducting therefrom any increase in the value of a new facility
164 and any salvage value derived from an old facility.

165 (b) When a joint agreement between the department and the
166 utility is executed for utility work to be accomplished as part
167 of a contract for construction of a transportation facility, the
168 department may participate in those utility work costs that
169 exceed the department's official estimate of the cost of the
170 work by more than 10 percent. The amount of such participation

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171 is limited to the difference between the official estimate of
172 all the work in the joint agreement plus 10 percent and the
173 amount awarded for this work in the construction contract for
174 such work. The department may not participate in any utility
175 work costs that occur as a result of changes or additions during
176 the course of the contract.

177 (c) When an agreement between the department and utility is
178 executed for utility work to be accomplished in advance of a
179 contract for construction of a transportation facility, the
180 department may participate in the cost of clearing and grubbing
181 necessary to perform such work.

182 (d) If the utility facility was initially installed to
183 exclusively serve the authority or its tenants, or both, the
184 authority shall bear the costs of the utility work. However, the
185 authority is not responsible for the cost of utility work
186 related to any subsequent additions to that facility for the
187 purpose of serving others. For a county or municipality, if such
188 utility facility was installed in the right-of-way as a means to
189 serve a county or municipal facility on a parcel of property
190 adjacent to the right-of-way and if the intended use of the
191 county or municipal facility is for a use other than
192 transportation purposes, the obligation of the county or
193 municipality to bear the costs of the utility work shall extend
194 only to utility work on the parcel of property on which the
195 facility of the county or municipality originally served by the
196 utility facility is located.

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197 (e) If, under an agreement between a utility and the
198 authority entered into after July 1, 2009, the utility conveys,
199 subordinates, or relinquishes a compensable property right to
200 the authority for the purpose of accommodating the acquisition
201 or use of the right-of-way by the authority, without the
202 agreement expressly addressing future responsibility for the
203 cost of necessary utility work, the authority shall bear the
204 cost of removal or relocation. This paragraph does not impair or
205 restrict, and may not be used to interpret, the terms of any
206 such agreement entered into before July 1, 2009.

207 (f) If the utility is an electric facility being relocated
208 underground in order to enhance vehicular, bicycle, and
209 pedestrian safety and in which ownership of the electric
210 facility to be placed underground has been transferred from a
211 private to a public utility within the past 5 years, the
212 department shall incur all costs of the necessary utility work.

213 (g) An authority may bear the costs of utility work
214 required to eliminate an unreasonable interference when the
215 utility is not able to establish that it has a compensable
216 property right in the particular property where the utility is
217 located if:

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

220 2. The utility demonstrates that it has a compensable
221 property right in adjacent properties along the alignment of the
222 utility or, after due diligence, certifies that the utility does

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223 not have evidence to prove or disprove that it has a compensable
224 property right in the particular property where the utility is
225 located; and

226 3. The information available to the authority does not
227 establish the relative priorities of the authority's and the
228 utility's interests in the particular property.

229 (h) If a municipally owned utility or county-owned utility
230 is located in a rural area of critical economic concern, as
231 defined in s. 288.0656(2), and the department determines that
232 the utility is unable, and will not be able within the next 10
233 years, to pay for the cost of utility work necessitated by a
234 department project on the State Highway System, the department
235 may pay, in whole or in part, the cost of such utility work
236 performed by the department or its contractor.

237 (i) If the relocation of utility facilities is necessitated
238 by the construction of a commuter rail service project or an
239 intercity passenger rail service project and the cost of the
240 project is eligible and approved for reimbursement by the
241 Federal Government, then in that event the utility owning or
242 operating such facilities located by permit on a department-
243 owned rail corridor shall perform any necessary utility
244 relocation work upon notice from the department, and the
245 department shall pay the expense properly attributable to such
246 utility relocation work in the same proportion as federal funds
247 are expended on the commuter rail service project or an
248 intercity passenger rail service project after deducting

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249 therefrom any increase in the value of a new facility and any
250 salvage value derived from an old facility. In no event shall
251 the state be required to use state dollars for such utility
252 relocation work. This paragraph does not apply to any phase of
253 the Central Florida Commuter Rail project, known as SunRail.

254 (j) If a utility is lawfully located within an existing and
255 valid utility easement granted by recorded plat, regardless of
256 whether such land was subsequently acquired by the authority by
257 dedication, transfer of fee, or otherwise, the authority shall
258 bear the cost of the utility work required to eliminate an
259 unreasonable interference.

260 Section 4. The Legislature finds that a proper and
261 legitimate state purpose is served by clarifying a utility's
262 responsibility for relocating its facilities within the right of
263 way or within a utility easement granted by recorded plat.
264 Therefore, the Legislature determines and declares that this act
265 fulfills an important state interest.

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

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

271

Remove everything before the enacting clause and insert:

272

A bill to be entitled

273

An act relating to the location of utilities; amending s.

274

125.42, F.S.; authorizing a board of county commissioners to

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 391 (2015)

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275 grant a license to work on or operate specified communications
276 services lines within the right-of-way limits of certain county
277 or public highways or roads; conforming a cross-reference;
278 amending s. 337.401, F.S.; specifying that the Department of
279 Transportation and certain local governmental entities may
280 prescribe and enforce rules or regulations regarding the
281 placement and maintenance of specified structures and lines
282 within the right-of-ways of roads or publicly owned rail
283 corridors under their respective jurisdictions; prohibiting a
284 municipality or county from requiring a utility or a provider of
285 communications services to resubmit proprietary maps of
286 previously permitted facilities; amending s. 337.403, F.S.;
287 specifying that a utility located within certain right-of-way
288 limits must initiate and pay for the work necessary to alleviate
289 any interference to the use of certain public roads or rail
290 corridors; requiring an authority to pay the cost of requiring
291 the relocation of a utility, under certain circumstances;
292 requiring an entity other than the authority to pay the cost of
293 certain relocations of utilities under certain circumstances;
294 requiring an authority to pay the cost of utility work required
295 to eliminate unreasonable interference within certain existing
296 utility easements; providing a finding that the act fulfills an
297 important state interest; providing an effective date.

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