

By the Committee on Community Affairs; and Senator Flores

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1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; revising the circumstances under
4 which a board of county commissioners is authorized to
5 grant to a person or private corporation a license for
6 specified projects related to lines for the
7 transmission of certain public utilities and
8 communication services; conforming a cross-reference;
9 amending s. 337.401, F.S.; authorizing the Department
10 of Transportation and certain local governmental
11 entities to prescribe and enforce rules or regulations
12 regarding the placement and maintenance of specified
13 structures and lines within the right-of-way limits of
14 roads or publicly owned rail corridors under their
15 respective jurisdictions; conforming cross-references;
16 amending s. 337.403, F.S.; specifying that the owner
17 of a utility located within certain right-of-way
18 limits must initiate and bear the cost necessary to
19 alleviate any interference to the use of certain
20 public roads or rail corridors under certain
21 circumstances; conforming a cross-reference; requiring
22 the authority to bear the cost of the utility work
23 necessary to eliminate an unreasonable interference if
24 the utility is lawfully located within a certain
25 utility easement, subject to certain deductions;
26 providing findings of an important state interest;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

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

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

(c) Whereby the licensee shall hold the board of county

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59 commissioners and members thereof harmless from the payment of
60 any compensation or damages resulting from the exercise of the
61 privileges granted in any instrument creating the license; and

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

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

68 (3) The board of county commissioners is authorized to
69 grant exclusive or nonexclusive licenses for the purposes stated
70 herein for television.

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

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

80 Section 2. Paragraph (a) of subsection (1) of section
81 337.401, Florida Statutes, is amended to read:

82 337.401 Use of right-of-way for utilities subject to
83 regulation; permit; fees.—

84 (1) (a) The department and local governmental entities,
85 referred to in this section and in ss. 337.402, 337.403, and
86 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
87 jurisdiction and control of public roads or publicly owned rail

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

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

106 337.403 Interference caused by utility; expenses.—

107 (1) If a utility that is placed upon, under, over, or
108 within the right-of-way limits of ~~along~~ any public road or
109 publicly owned rail corridor is found by the authority to be
110 unreasonably interfering in any way with the convenient, safe,
111 or continuous use, or the maintenance, improvement, extension,
112 or expansion, of such public road or publicly owned rail
113 corridor, the utility owner shall, upon 30 days' written notice
114 to the utility or its agent by the authority, initiate the work
115 necessary to alleviate the interference at its own expense
116 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must

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117 be completed within such reasonable time as stated in the notice
118 or such time as agreed to by the authority and the utility
119 owner.

120 (a) If the relocation of utility facilities, as referred to
121 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
122 84-627, is necessitated by the construction of a project on the
123 federal-aid interstate system, including extensions thereof
124 within urban areas, and the cost of the project is eligible and
125 approved for reimbursement by the Federal Government to the
126 extent of 90 percent or more under the Federal Aid Highway Act,
127 or any amendment thereof, then in that event the utility owning
128 or operating such facilities shall perform any necessary work
129 upon notice from the department, and the state shall pay the
130 entire expense properly attributable to such work after
131 deducting therefrom any increase in the value of a new facility
132 and any salvage value derived from an old facility.

133 (b) When a joint agreement between the department and the
134 utility is executed for utility work to be accomplished as part
135 of a contract for construction of a transportation facility, the
136 department may participate in those utility work costs that
137 exceed the department's official estimate of the cost of the
138 work by more than 10 percent. The amount of such participation
139 is limited to the difference between the official estimate of
140 all the work in the joint agreement plus 10 percent and the
141 amount awarded for this work in the construction contract for
142 such work. The department may not participate in any utility
143 work costs that occur as a result of changes or additions during
144 the course of the contract.

145 (c) When an agreement between the department and utility is

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146 executed for utility work to be accomplished in advance of a
147 contract for construction of a transportation facility, the
148 department may participate in the cost of clearing and grubbing
149 necessary to perform such work.

150 (d) If the utility facility was initially installed to
151 exclusively serve the authority or its tenants, or both, the
152 authority shall bear the costs of the utility work. However, the
153 authority is not responsible for the cost of utility work
154 related to any subsequent additions to that facility for the
155 purpose of serving others. For a county or municipality, if such
156 utility facility was installed in the right-of-way as a means to
157 serve a county or municipal facility on a parcel of property
158 adjacent to the right-of-way and if the intended use of the
159 county or municipal facility is for a use other than
160 transportation purposes, the obligation of the county or
161 municipality to bear the costs of the utility work shall extend
162 only to utility work on the parcel of property on which the
163 facility of the county or municipality originally served by the
164 utility facility is located.

165 (e) If, under an agreement between a utility and the
166 authority entered into after July 1, 2009, the utility conveys,
167 subordinates, or relinquishes a compensable property right to
168 the authority for the purpose of accommodating the acquisition
169 or use of the right-of-way by the authority, without the
170 agreement expressly addressing future responsibility for the
171 cost of necessary utility work, the authority shall bear the
172 cost of removal or relocation. This paragraph does not impair or
173 restrict, and may not be used to interpret, the terms of any
174 such agreement entered into before July 1, 2009.

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175 (f) If the utility is an electric facility being relocated
176 underground in order to enhance vehicular, bicycle, and
177 pedestrian safety and in which ownership of the electric
178 facility to be placed underground has been transferred from a
179 private to a public utility within the past 5 years, the
180 department shall incur all costs of the necessary utility work.

181 (g) An authority may bear the costs of utility work
182 required to eliminate an unreasonable interference when the
183 utility is not able to establish that it has a compensable
184 property right in the particular property where the utility is
185 located if:

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

188 2. The utility demonstrates that it has a compensable
189 property right in adjacent properties along the alignment of the
190 utility or, after due diligence, certifies that the utility does
191 not have evidence to prove or disprove that it has a compensable
192 property right in the particular property where the utility is
193 located; and

194 3. The information available to the authority does not
195 establish the relative priorities of the authority's and the
196 utility's interests in the particular property.

197 (h) If a municipally owned utility or county-owned utility
198 is located in a rural area of opportunity, as defined in s.
199 288.0656(2), and the department determines that the utility is
200 unable, and will not be able within the next 10 years, to pay
201 for the cost of utility work necessitated by a department
202 project on the State Highway System, the department may pay, in
203 whole or in part, the cost of such utility work performed by the

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204 department or its contractor.

205 (i) If the relocation of utility facilities is necessitated
206 by the construction of a commuter rail service project or an
207 intercity passenger rail service project and the cost of the
208 project is eligible and approved for reimbursement by the
209 Federal Government, then in that event the utility owning or
210 operating such facilities located by permit on a department-
211 owned rail corridor shall perform any necessary utility
212 relocation work upon notice from the department, and the
213 department shall pay the expense properly attributable to such
214 utility relocation work in the same proportion as federal funds
215 are expended on the commuter rail service project or an
216 intercity passenger rail service project after deducting
217 therefrom any increase in the value of a new facility and any
218 salvage value derived from an old facility. In no event shall
219 the state be required to use state dollars for such utility
220 relocation work. This paragraph does not apply to any phase of
221 the Central Florida Commuter Rail project, known as SunRail.

222 (j) If a utility is lawfully located within an existing and
223 valid utility easement granted by recorded plat, regardless of
224 whether such land was subsequently acquired by the authority by
225 dedication, transfer of fee, or otherwise, the authority must
226 bear the cost of the utility work required to eliminate an
227 unreasonable interference. The authority shall pay the entire
228 expense properly attributable to such work after deducting any
229 increase in the value of a new facility and any salvage value
230 derived from an old facility.

231 Section 4. The Legislature finds that a proper and
232 legitimate state purpose is served by clarifying a utility's

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233 responsibility for relocating its facilities within a utility
234 easement granted by recorded plat. Therefore, the Legislature
235 determines and declares that this act fulfills an important
236 state interest.

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