

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2576

SPONSOR: Communication and Public Utilities Committee and Senator Sebesta

SUBJECT: Roads Presumed to be Public Highways

DATE: March 30, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill exempts public utilities from governments’ presumed ownership of right-of-way under specific circumstances.

This bill substantially amends section 95.361 of the Florida Statutes.

II. Present Situation:

Section 95.361, F.S., provides circumstances under which a road is presumed to be dedicated to public use. Prior to 2003, it provided as follows. If a road was constructed by a county, municipality, or the Florida Department of Transportation (FDOT), and if one or more of these entities have maintained or repaired continuously and uninterruptedly for 4 years, jointly or severally, the road is presumed to be dedicated to public use, whether it was formally established as a public highway or not. A presumed dedication for public purpose vests all right, title, easement, and appurtenances in and to the road in the government entity. It is prima facie evidence of ownership of the land by a governmental entity if a governmental entity receiving such rights files a duly certified map in the office of the clerk of the circuit court where the road is located showing the lands and reciting on it that the road has vested in the governmental entity in accordance with these presumptive dedication provisions.

In 2003, the section was amended to add 2 new provisions. A new subsection (2) provides: if a road was constructed by a nongovernmental entity, if the road was not constructed by the governmental entity currently maintaining it, or if it cannot be determined who constructed the road, and if a county, municipality, or the FDOT has been regularly maintaining or repairing the road for the immediate past 7 years, jointly or severally, the road is presumed dedicated to public purpose. A new subsection (4) provides that any person having or claiming an interest in any

property affected by a presumptive dedication under subsection (2) has 1 year from the effective date of the bill (upon becoming a law, with the Governor approving it on July 14, 2003) or a period of 7 years after the initial date of regular maintenance, whichever is greater, to file a claim in equity or with a court of law against the governmental entity claiming presumptive dedication to cause a cessation of the maintenance and occupation of the property. A timely filed and adjudicated claim prevents dedication.

Electric utilities have expressed concerns about the impact of s. 95.361(4), F.S.

III. Effect of Proposed Changes:

The bill amends s. 95.361, F.S., to create an exemption for public utilities from presumed public road dedications.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives of electric utilities have stated, under their interpretation of s. 95.361, F.S, utility owners would be forced to pay the entire relocation costs if governmental entities claimed ownership of a road based upon dedication under this section. In addition, utility companies have expressed concerns the companies will incur significant legal costs to defend their property interests.

C. Government Sector Impact:

According to the FDOT, on rare occasions, FDOT assumes road right-of-way via maintenance. In such a rare instance, FDOT could be required to incur expenses to relocate utility facilities. The FDOT expects such a possibility is remote, resulting in an indeterminable and insignificant negative fiscal impact.

VI. Technical Deficiencies:

It is unclear what types of utilities are included in “public utilities” in the bill. The statutes currently have 3 detailed definitions of the term “public utilities” each including different utilities. These definitions are:

Section 177.031(7)(b), F.S., relating to municipalities platting and land boundaries, defines “public utility” to include “any public or private utility, such as, but not limited to, storm drainage, sanitary sewers, electric power, water service, gas service, or telephone line, whether underground or overhead.”

Section 366.02(1), F.S., relating to regulated public utilities, defines “public utility” to mean “every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term “public utility” does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.”

Section 876.37(3), F.S., which relates to sabotage prevention, defines “public utility” to include “any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication, or other system, by whomsoever owned or operated for public use.”

VII. Related Issues:

None.

VIII. Amendments:

None.