

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1389 Utility Right-of-way Relocation

SPONSOR(S): Kreegel

TIED BILLS: **IDEN./SIM. BILLS:** SB 1934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Johnson	Brown
2) Energy & Utilities Subcommittee			
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

When the Department of Transportation (DOT) or a local government determines that a utility installation unreasonably interferes with:

- The convenient, safe, effective, or continuous use of a public road or publicly owned rail corridor, or
- The maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor,

the utility is required to remove or relocate the utility at its own expense, with some exceptions.

HB 1389 addresses matters relating to these relocation requirements. The bill:

- Revises a notice provision related to the relocation of utilities.
- Expands the exception for utility facilities installed for DOT's exclusive use to include utilities installed for any authority, thereby incorporating municipalities, counties, and expressway authorities.
- Removes a set date related to agreements between utilities and authorities that do not contain provisions regarding the removal or relocation of utilities.
- Provides that if the authority acquires property where the utility is legally located, the authority pays the cost of removing or relocating the utility.
- Provides that for certain permits issued in 1972 and where certain conditions are met, DOT will pay the utility relocation expenses. The bill expressly provides that this provision is applicable to facilities located on the Turnpike Homestead extension.

The bill has an indeterminate but potentially negative fiscal impact on state and local governments, as it is unknown the extent to which specific facilities may require future removal or relocation.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities. Section 337.401(1), F.S., provides that DOT and local government entities which have jurisdiction and control of public roads and publically-owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of any electric transmission lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., provides that, except for the exceptions below, if an authority determines that a utility upon, under, over, or along a public road or publicly owned rail corridor, is interfering with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor, the utility, upon 30 days written notice, shall remove or relocate the utility at its own expense. The exceptions are:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.
- Where the cost of the utility improvement, installation, or removal exceeds DOT's official cost estimates for such work by 10 percent, DOT participation is limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract;
- When relocation of the utility takes place before construction commences, DOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation;
- If the utility facility being removed or relocated was initially installed to benefit DOT, its tenants, or both, DOT bears the cost of removal or relocation, but DOT is not responsible for bearing the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others;
- If, pursuant to an agreement between a utility and the authority (DOT and local governments) entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes 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, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009; 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. However, some local governments interpret the provision to mean that the utility has 30 days to complete the removal or relocation of the utility.

Proposed Changes

The bill amends s. 337.403, F.S., relating to utility relocation. The bill provides that upon 30 days' written notice, the utility is required to initiate the removal or relocation of the utility.

The bill amends the exception for facilities that were initially installed to serve DOT, its tenants, or both. The bill expands this exception beyond DOT to any authority, including municipalities, counties, and expressway authorities.

The bill amends s. 337.403(1)(e), F.S, related to agreements between a utility and an authority (DOT and local governments) entered into after July 1, 2009. The bill removes the reference to July 1, 2009, and removes a limitation stating that the statute “does not impair or restrict, or may not be used to interpret the terms of any agreement entered into before July 1, 2009.”

The bill adds an additional exception to provide that if the authority acquires property on which a utility is legally located, the authority bears the cost of removing or relocating the utility.

HB 1389 provides that for any permit issued by DOT in 1972 to any utility when the utility was in possession of the permitted property and transferred its interest to DOT and if master agreements between DOT and the utility were entered into prior to any permits being issued, DOT is required to pay for any relocation expenses affecting a compensable interest of the utility, notwithstanding any permit, statutory, or contractual language to the contrary. The bill provides that this paragraph only applies to utilities located on the Turnpike Homestead extension and if the utility transferred its interest to DOT without compensation for future relocation expense.

Section 337.403(2), F.S., provides that if the removal or relocation of a utility facility is incidental to the work being done on a road or publicly owned rail corridor, notice is required to be given at the time the contract for work is advertised for bids, or 30 days prior to the commencement of work by the authority. The bill provides that this notice must be for “no less than” 30 days.

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 Amends. s. 337.403, F.S., relating to the relocation of utilities.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Indeterminate. The bill increases the number of instances in which DOT may be responsible for the cost of relocating or removing utilities. However, the additional utilities that DOT may be responsible for relocating or removing cannot be determined at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

3. Indeterminate. The bill increases the number of instances in which local governments may be responsible for relocating or removing utilities. However, the additional utilities that local governments may be responsible for relocating or removing cannot be determined at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the costs to utilities for removal or relocations of utilities during transportation projects, in some circumstances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

An exception to the mandate's provision applies as the bill also applies to similarly situated entities including DOT and expressway authorities.¹

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹ See Article VII, s. 18(a), Constitution of the State of Florida.