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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2012	.	
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The Committee on Transportation (Evers) recommended the following:

**Senate Amendment**

Delete lines 1726 - 1837  
and insert:

Section 35. Section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by relocation of utility;  
expenses.—

(1) When a ~~Any utility heretofore or hereafter~~ placed upon, under, over, or along any public road or publicly owned rail corridor that is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous



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13 use, or the maintenance, improvement, extension, or expansion,  
14 of such public road or publicly owned rail corridor, the utility  
15 owner shall, upon 30 days' written notice to the utility or its  
16 agent by the authority, initiate the work necessary to alleviate  
17 the interference ~~be removed or relocated by such utility~~ at its  
18 own expense except as provided in paragraphs (a)-(f). The work  
19 must be completed within such reasonable time as stated in the  
20 notice or such time as agreed to by the authority and the  
21 utility owner.

22 (a) If the relocation of utility facilities, as referred to  
23 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
24 627 of the 84th Congress, is necessitated by the construction of  
25 a project on the federal-aid interstate system, including  
26 extensions thereof within urban areas, and the cost of the  
27 project is eligible and approved for reimbursement by the  
28 Federal Government to the extent of 90 percent or more under the  
29 Federal Aid Highway Act, or any amendment thereof, then in that  
30 event the utility owning or operating such facilities shall  
31 perform any necessary work ~~relocate the facilities~~ upon notice  
32 from ~~order of~~ the department, and the state shall pay the entire  
33 expense properly attributable to such work ~~relocation~~ after  
34 deducting therefrom any increase in the value of any ~~the~~ new  
35 facility and any salvage value derived from any ~~the~~ old  
36 facility.

37 (b) When a joint agreement between the department and the  
38 utility is executed for utility ~~improvement, relocation, or~~  
39 ~~removal~~ work to be accomplished as part of a contract for  
40 construction of a transportation facility, the department may  
41 participate in those utility work ~~improvement, relocation, or~~



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42 ~~removal~~ costs that exceed the department's official estimate of  
43 the cost of the work by more than 10 percent. The amount of such  
44 participation shall be limited to the difference between the  
45 official estimate of all the work in the joint agreement plus 10  
46 percent and the amount awarded for this work in the construction  
47 contract for such work. The department may not participate in  
48 any utility work ~~improvement, relocation, or removal~~ costs that  
49 occur as a result of changes or additions during the course of  
50 the contract.

51 (c) When an agreement between the department and utility is  
52 executed for utility ~~improvement, relocation, or removal~~ work to  
53 be accomplished in advance of a contract for construction of a  
54 transportation facility, the department may participate in the  
55 cost of clearing and grubbing necessary to perform such work.

56 (d) If the utility facility involved ~~being removed or~~  
57 ~~relocated~~ was initially installed to exclusively serve the  
58 department, its tenants, or both, the department shall bear the  
59 costs of the utility work ~~removing or relocating that utility~~  
60 ~~facility~~. However, the department is not responsible for bearing  
61 the cost of utility work related to ~~removing or relocating~~ any  
62 subsequent additions to that facility for the purpose of serving  
63 others.

64 (e) If, under an agreement between a utility and the  
65 authority entered into after July 1, 2009, the utility conveys,  
66 subordinates, or relinquishes a compensable property right to  
67 the authority for the purpose of accommodating the acquisition  
68 or use of the right-of-way by the authority, without the  
69 agreement expressly addressing future responsibility for the  
70 cost of necessary utility work ~~removing or relocating the~~



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71 ~~utility~~, the authority shall bear the cost of removal or  
72 relocation. This paragraph does not impair or restrict, and may  
73 not be used to interpret, the terms of any such agreement  
74 entered into before July 1, 2009.

75 (f) If the utility is an electric facility being relocated  
76 underground in order to enhance vehicular, bicycle, and  
77 pedestrian safety and in which ownership of the electric  
78 facility to be placed underground has been transferred from a  
79 private to a public utility within the past 5 years, the  
80 department shall incur all costs of the necessary utility work  
81 ~~relocation~~.

82 (2) If such utility work ~~removal or relocation~~ is  
83 incidental to work to be done on such road or publicly owned  
84 rail corridor, the notice shall be given at the same time the  
85 contract for the work is advertised for bids, or no less than 30  
86 days prior to the commencement of such work by the authority,  
87 whichever is greater.

88 (3) Whenever the notice from ~~an order of~~ the authority  
89 requires such utility work ~~removal or change in the location of~~  
90 ~~any utility from the right-of-way of a public road or publicly~~  
91 ~~owned rail corridor~~, and the owner thereof fails to perform the  
92 work ~~remove or change the same~~ at his or her own expense ~~to~~  
93 ~~conform to the order~~ within the time stated in the notice or  
94 such other time as agreed to by the authority and the utility  
95 owner, the authority shall proceed to cause the utility work to  
96 be performed ~~to be removed~~. The expense thereby incurred shall  
97 be paid out of any money available therefor, and such expense  
98 shall, except as provided in subsection (1), be charged against  
99 the owner and levied and collected and paid into the fund from



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100 which the expense of such relocation was paid.

101 Section 36. Subsection (1) of section 337.404, Florida  
102 Statutes, is amended to read:

103 337.404 Removal or relocation of utility facilities; notice  
104 and order; court review.—

105 (1) Whenever it becomes ~~shall become~~ necessary for the  
106 authority to perform utility work ~~remove or relocate any utility~~  
107 as provided in s. 337.403 ~~the preceding section~~, the owner of  
108 the utility, or the owner's chief agent, shall be given notice  
109 that the authority will perform ~~of such work removal or~~  
110 ~~relocation~~ and, after the work is complete, given an order  
111 requiring the payment of the cost thereof, and a ~~shall be given~~  
112 reasonable time, which may ~~shall~~ not be less than 20 or ~~not~~ more  
113 than 30 days, in which to appear before the authority to contest  
114 the reasonableness of the order. Should the owner or the owner's  
115 representative not appear, the determination of the cost to the  
116 owner shall be final. Authorities considered agencies for the  
117 purposes of chapter 120 shall adjudicate removal or relocation  
118 of utilities pursuant to chapter 120.