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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2013	.	
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The Committee on Transportation (Evers) recommended the following:

Senate Amendment (with title amendment)

Between lines 833 and 834

insert:

Section 14. Paragraph (a) of subsection (1) of section 377.401, Florida Statutes, is amended to read:

377.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in ss. 377.401-377.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors may ~~are authorized to~~ prescribe and enforce reasonable

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13 rules or regulations with reference to the placing and
14 maintaining within the right-of-way limits of ~~along, across, or~~
15 ~~on~~ any public road or publicly owned rail corridors under their
16 respective jurisdictions any electric transmission, telephone,
17 telegraph, or other communications services lines; pole lines;
18 poles; railways; ditches; sewers; water, heat, or gas mains;
19 pipelines; fences; gasoline tanks and pumps; or other structures
20 referred to in this section as the "utility." The department may
21 enter into a permit-delegation agreement with a governmental
22 entity if issuance of a permit is based on requirements that the
23 department finds will ensure the safety and integrity of
24 facilities of the Department of Transportation; however, the
25 permit-delegation agreement does not apply to facilities of
26 electric utilities as defined in s. 366.02(2).

27 Section 15. Subsection (1) of section 377.403, Florida
28 Statutes, is amended to read:

29 377.403 Interference caused by relocation of utility;
30 expenses.—

31 (1) If a utility that is placed within the right-of-way
32 limits of ~~upon, under, over, or along~~ any public road or
33 publicly owned rail corridor is found by the authority to be
34 unreasonably interfering in any way with the convenient, safe,
35 or continuous use, or the maintenance, improvement, extension,
36 or expansion, of such public road or publicly owned rail
37 corridor, the utility owner shall, upon 30 days' written notice
38 to the utility or its agent by the authority, initiate the work
39 necessary to alleviate the interference at its own expense
40 except as provided in paragraphs (a)-(h) ~~(a)-(g)~~. The work must
41 be completed within such reasonable time as stated in the notice

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42 or such time as agreed to by the authority and the utility
43 owner.

44 (a) If the relocation of utility facilities, as referred to
45 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
46 627 of the 84th Congress, is necessitated by the construction of
47 a project on the federal-aid interstate system, including
48 extensions thereof within urban areas, and the cost of the
49 project is eligible and approved for reimbursement by the
50 Federal Government to the extent of 90 percent or more under the
51 Federal Aid Highway Act, or any amendment thereof, then ~~in that~~
52 ~~event~~ the utility owning or operating such facilities shall
53 perform any necessary work upon notice from the department, and
54 the state shall pay the entire expense properly attributable to
55 such work after deducting from the payment ~~therefrom~~ any
56 increase in the value of a new facility and any salvage value
57 derived from an old facility.

58 (b) When a joint agreement between the department and the
59 utility is executed for utility work to be accomplished as part
60 of a contract for construction of a transportation facility, the
61 department may participate in those utility work costs that
62 exceed the department's official estimate of the cost of the
63 work by more than 10 percent. The amount of such participation
64 shall be limited to the difference between the official estimate
65 of all the work in the joint agreement plus 10 percent and the
66 amount awarded for this work in the construction contract for
67 such work. The department may not participate in any utility
68 work costs that occur as a result of changes or additions during
69 the course of the contract.

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

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71 executed for utility work to be accomplished in advance of a
72 contract for construction of a transportation facility, the
73 department may participate in the cost of clearing and grubbing
74 necessary to perform such work.

75 (d) If the utility facility was initially installed to
76 exclusively serve the authority or its tenants, or both, the
77 authority shall bear the costs of the utility work. However, the
78 authority is not responsible for the cost of utility work
79 related to any subsequent additions to that facility for the
80 purpose of serving others.

81 (e) If, under an agreement between a utility and the
82 authority entered into after July 1, 2009, the utility conveys,
83 subordinates, or relinquishes a compensable property right to
84 the authority for the purpose of accommodating the acquisition
85 or use of the right-of-way by the authority, without the
86 agreement expressly addressing future responsibility for the
87 cost of necessary utility work, the authority must ~~shall~~ bear
88 the cost of removal or relocation. This paragraph does not
89 impair or restrict, and may not be used to interpret, the terms
90 of any such agreement entered into before July 1, 2009.

91 (f) If the utility is an electric facility being relocated
92 underground in order to enhance vehicular, bicycle, and
93 pedestrian safety and in which ownership of the electric
94 facility to be placed underground has been transferred from a
95 private to a public utility within the past 5 years, the
96 department shall incur all costs of the necessary utility work.

97 (g) An authority may bear the costs of utility work
98 required to eliminate an unreasonable interference when the
99 utility is not able to establish that it has a compensable

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100 property right in the particular property where the utility is
101 located if:

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

104 2. The utility demonstrates that it has a compensable
105 property right in ~~all~~ adjacent properties along the alignment of
106 the utility or, after due diligence, certifies that the utility
107 does not have evidence to prove or disprove that it has a
108 compensable property right in the particular property where the
109 utility is located; and

110 3. The information available to the authority does not
111 establish the relative priorities of the authority's and the
112 utility's interests in the particular property.

113 (h) If the relocation of utility facilities is necessitated
114 by the construction of a commuter rail service project or an
115 intercity passenger rail service project and the cost of the
116 project is eligible and approved for reimbursement by the
117 Federal Government, the utility owning or operating such
118 facilities located by permit on a department-owned rail corridor
119 shall perform any necessary work upon notice from the
120 department, and the department shall pay the expense properly
121 attributable to such work in the same proportion as federal
122 funds are expended on the commuter rail service project after
123 deducting from the payment any increase in the value of a new
124 facility and any salvage value derived from an old facility. The
125 state is not required to use state dollars for such utility
126 relocation work. This subsection does not apply to any phase of
127 the Central Florida Rail Corridor project known as SunRail.
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129 ===== T I T L E A M E N D M E N T =====

130 And the title is amended as follows:

131 Delete line 67

132 and insert:

133 lease must meet; amending s. 337.401, F.S.; providing
134 that the department and local governmental entities
135 that have jurisdiction and control of public roads or
136 publicly owned rail corridors may prescribe and
137 enforce rules and regulations with reference to
138 placing and maintaining certain structures and
139 utilities within right-of-way limits of public roads
140 or rail corridors; amending s. 337.403, F.S.;
141 specifying utilities that are placed within rights-of-
142 way of public roads or publicly owned rail corridors
143 and are found to interfere with the public road or
144 publicly owned rail corridor must alleviate the
145 interference; providing additional circumstances when
146 the authority may bear the cost of utility work
147 required to eliminate an unreasonable interference;
148 delegating responsibilities for necessary work and
149 payment for the work if the relocation of utility
150 facilities is necessitated by the construction of a
151 commuter rail service project or an inter-city
152 passenger rail service project; amending s. 337.408,
153 F.S.; providing