

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Ingram offered the following:

2
3 **Amendment (with title amendment)**

4 Remove line 558 and insert:

5 (10) EFFECTIVE DATE.—This section shall take effect July
6 1, 2015.

7 Section 2. Subsections (1) and (5) of section 125.42,
8 Florida Statutes, are amended to read:

9 125.42 Water, sewage, gas, power, telephone, other
10 utility, and television lines within the right-of-way limits of
11 ~~along~~ county roads and highways.—

12 (1) The board of county commissioners, with respect to
13 property located outside ~~without~~ the corporate limits of any
14 municipality, may ~~is authorized to~~ grant a license to any person

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15 or private corporation to construct, maintain, repair, operate,
16 and remove lines for the transmission of water, sewage, gas,
17 power, telephone, other public utilities, ~~and~~ television, or
18 other communications services as defined in s. 202.11(1) under,
19 on, over, across, or within the right-of-way limits of ~~and along~~
20 any county highway or any public road or highway acquired by the
21 county or public by purchase, gift, devise, dedication, or
22 prescription. However, the board of county commissioners shall
23 include in any instrument granting such license adequate
24 provisions:

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

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

34 (c) Whereby the licensee shall hold the board of county
35 commissioners and members thereof harmless from the payment of
36 any compensation or damages resulting from the exercise of the
37 privileges granted in any instrument creating the license; and

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

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

46 Section 3. Paragraph (a) of subsection (1), subsection
47 (2), and paragraph (b) of subsection (3) of section 337.401,
48 Florida Statutes, are amended to read:

49 337.401 Use of right-of-way for utilities subject to
50 regulation; permit; fees.—

51 (1) (a) The department and local governmental entities,
52 referred to in this section and ss. 337.402-337.404 ~~ss. 337.401-~~
53 ~~337.404~~ as the "authority," that have jurisdiction and control
54 of public roads or publicly owned rail corridors may ~~are~~
55 ~~authorized to~~ prescribe and enforce reasonable rules or
56 regulations with reference to the placing and maintaining ~~along,~~
57 across, ~~or~~ on, or within the right-of-way limits of any road or
58 publicly owned rail corridors under their respective
59 jurisdictions any electric transmission, telephone, telegraph,
60 or other communications services lines; pole lines; poles;
61 railways; ditches; sewers; water, heat, or gas mains; pipelines;
62 fences; gasoline tanks and pumps; or other structures referred
63 to in this section and ss. 337.402-337.404 as the "utility." The
64 department may enter into a permit-delegation agreement with a
65 governmental entity if issuance of a permit is based on

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66 requirements that the department finds will ensure the safety
67 and integrity of facilities of the Department of Transportation;
68 however, the permit-delegation agreement does not apply to
69 facilities of electric utilities as defined in s. 366.02(2).

70 (2) The authority may grant to any person who is a
71 resident of this state, or to any corporation which is organized
72 under the laws of this state or licensed to do business within
73 this state, the use of a right-of-way for the utility in
74 accordance with such rules or regulations as the authority may
75 adopt. No utility shall be installed, located, or relocated
76 unless authorized by a written permit issued by the authority.
77 However, for public roads or publicly owned rail corridors under
78 the jurisdiction of the department, a utility relocation
79 schedule and relocation agreement may be executed in lieu of a
80 written permit. The permit shall require the permitholder to be
81 responsible for any damage resulting from the issuance of such
82 permit. In exercising its authority over a utility under this
83 section, a municipality or county may not require a utility to
84 provide proprietary maps of facilities if such facilities were
85 previously subject to a permit from the authority. The authority
86 may initiate injunctive proceedings as provided in s. 120.69 to
87 enforce provisions of this subsection or any rule or order
88 issued or entered into pursuant thereto.

89 (3)

90 (b) Registration described in paragraph (a) does not
91 establish a right to place or maintain, or priority for the

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92 placement or maintenance of, a communications facility in roads
93 or rights-of-way of a municipality or county. Each municipality
94 and county retains the authority to regulate and manage
95 municipal and county roads or rights-of-way in exercising its
96 police power. Any rules or regulations adopted by a municipality
97 or county which govern the occupation of its roads or rights-of-
98 way by providers of communications services must be related to
99 the placement or maintenance of facilities in such roads or
100 rights-of-way, must be reasonable and nondiscriminatory, and may
101 include only those matters necessary to manage the roads or
102 rights-of-way of the municipality or county. In exercising its
103 authority over providers of communications services under this
104 section, a municipality or county may not require a provider of
105 communications services to provide proprietary maps of
106 facilities if such facilities were previously subject to a
107 permit from the authority.

108 Section 4. Subsection (1) of section 337.403, Florida
109 Statutes, is amended to read:

110 337.403 Interference caused by utility; expenses.—

111 (1) If a utility that is placed upon, under, over, or
112 within the right-of-way limits of ~~along~~ any public road or
113 publicly owned rail corridor is found by the authority to be
114 unreasonably interfering in any way with the convenient, safe,
115 or continuous use, or the maintenance, improvement, extension,
116 or expansion, of such public road or publicly owned rail
117 corridor, the utility owner shall, upon 30 days' written notice

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118 to the utility or its agent by the authority, initiate the work
119 necessary to alleviate the interference at its own expense
120 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
121 be completed within such reasonable time as stated in the notice
122 or such time as agreed to by the authority and the utility
123 owner. If an authority requires the relocation of a utility for
124 purposes not described in this subsection and the utility owner
125 is authorized by state or common law or state or local agreement
126 to place facilities in the public-right-of-way, the authority
127 bears the cost of relocating the utility. If the relocation is
128 required as a condition or result of a project by an entity
129 other than an authority, the entity other than the authority
130 bears the costs of relocating the utility except to the extent
131 that the relocation would otherwise be required in connection
132 with a transportation improvement identified in the authority's
133 capital improvement schedule and scheduled for construction
134 within 5 years. This subsection does not impair any right of the
135 holder of a private railroad right-of-way or obligate the holder
136 of such private railroad right-of-way to bear the relocation
137 cost of such railroad right-of-way, subject to any agreement
138 between the holder of the private railroad right-of-way and a
139 utility that otherwise allocates such relocation cost. This
140 subsection also does not affect any lawfully issued permit or
141 lawful contract entered into between an authority and a utility
142 before April 15, 2015. To the extent that an authority is
143 required by this subsection to bear the cost of relocating a

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144 utility, the authority shall pay the entire expense properly
145 attributable to such work after deducting any increase in the
146 value of a new facility and any salvage value derived from the
147 previous facility.

148 (a) If the relocation of utility facilities, as referred
149 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
150 84-627, is necessitated by the construction of a project on the
151 federal-aid interstate system, including extensions thereof
152 within urban areas, and the cost of the project is eligible and
153 approved for reimbursement by the Federal Government to the
154 extent of 90 percent or more under the Federal Aid Highway Act,
155 or any amendment thereof, then in that event the utility owning
156 or operating such facilities shall perform any necessary work
157 upon notice from the department, and the state shall pay the
158 entire expense properly attributable to such work after
159 deducting therefrom any increase in the value of a new facility
160 and any salvage value derived from an old facility.

161 (b) When a joint agreement between the department and the
162 utility is executed for utility work to be accomplished as part
163 of a contract for construction of a transportation facility, the
164 department may participate in those utility work costs that
165 exceed the department's official estimate of the cost of the
166 work by more than 10 percent. The amount of such participation
167 is limited to the difference between the official estimate of
168 all the work in the joint agreement plus 10 percent and the
169 amount awarded for this work in the construction contract for

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170 such work. The department may not participate in any utility
171 work costs that occur as a result of changes or additions during
172 the course of the contract.

173 (c) When an agreement between the department and utility
174 is executed for utility work to be accomplished in advance of a
175 contract for construction of a transportation facility, the
176 department may participate in the cost of clearing and grubbing
177 necessary to perform such work.

178 (d) If the utility facility was initially installed to
179 exclusively serve the authority or its tenants, or both, the
180 authority shall bear the costs of the utility work. However, the
181 authority is not responsible for the cost of utility work
182 related to any subsequent additions to that facility for the
183 purpose of serving others. For a county or municipality, if such
184 utility facility was installed in the right-of-way as a means to
185 serve a county or municipal facility on a parcel of property
186 adjacent to the right-of-way and if the intended use of the
187 county or municipal facility is for a use other than
188 transportation purposes, the obligation of the county or
189 municipality to bear the costs of the utility work shall extend
190 only to utility work on the parcel of property on which the
191 facility of the county or municipality originally served by the
192 utility facility is located.

193 (e) If, under an agreement between a utility and the
194 authority entered into after July 1, 2009, the utility conveys,
195 subordinates, or relinquishes a compensable property right to

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196 the authority for the purpose of accommodating the acquisition
197 or use of the right-of-way by the authority, without the
198 agreement expressly addressing future responsibility for the
199 cost of necessary utility work, the authority shall bear the
200 cost of removal or relocation. This paragraph does not impair or
201 restrict, and may not be used to interpret, the terms of any
202 such agreement entered into before July 1, 2009.

203 (f) If the utility is an electric facility being relocated
204 underground in order to enhance vehicular, bicycle, and
205 pedestrian safety and in which ownership of the electric
206 facility to be placed underground has been transferred from a
207 private to a public utility within the past 5 years, the
208 department shall incur all costs of the necessary utility work.

209 (g) An authority may bear the costs of utility work
210 required to eliminate an unreasonable interference when the
211 utility is not able to establish that it has a compensable
212 property right in the particular property where the utility is
213 located if:

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

216 2. The utility demonstrates that it has a compensable
217 property right in adjacent properties along the alignment of the
218 utility or, after due diligence, certifies that the utility does
219 not have evidence to prove or disprove that it has a compensable
220 property right in the particular property where the utility is
221 located; and

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222 3. The information available to the authority does not
223 establish the relative priorities of the authority's and the
224 utility's interests in the particular property.

225 (h) If a municipally owned utility or county-owned utility
226 is located in a rural area of critical economic concern, as
227 defined in s. 288.0656(2), and the department determines that
228 the utility is unable, and will not be able within the next 10
229 years, to pay for the cost of utility work necessitated by a
230 department project on the State Highway System, the department
231 may pay, in whole or in part, the cost of such utility work
232 performed by the department or its contractor.

233 (i) If the relocation of utility facilities is
234 necessitated by the construction of a commuter rail service
235 project or an intercity passenger rail service project and the
236 cost of the project is eligible and approved for reimbursement
237 by the Federal Government, then in that event the utility owning
238 or operating such facilities located by permit on a department-
239 owned rail corridor shall perform any necessary utility
240 relocation work upon notice from the department, and the
241 department shall pay the expense properly attributable to such
242 utility relocation work in the same proportion as federal funds
243 are expended on the commuter rail service project or an
244 intercity passenger rail service project after deducting
245 therefrom any increase in the value of a new facility and any
246 salvage value derived from an old facility. In no event shall
247 the state be required to use state dollars for such utility

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248 relocation work. This paragraph does not apply to any phase of
249 the Central Florida Commuter Rail project, known as SunRail.

250 (j) If a utility is lawfully located within an existing
251 and valid utility easement granted by recorded plat, regardless
252 of whether such land was subsequently acquired by the authority
253 by dedication, transfer of fee, or otherwise, the authority must
254 bear the cost of the utility work required to eliminate an
255 unreasonable interference.

256 Section 5. The Legislature finds that a proper and
257 legitimate state purpose is served by clarifying a utility's
258 responsibility for relocating its facilities within a right-of-
259 way or within a utility easement granted by recorded plat, and,
260 to that end, the Legislature determines and declares that this
261 act fulfills an important state interest.

262 Section 6. Except as otherwise expressly provided in this
263 act, this act shall take effect upon becoming a law.

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266 **T I T L E A M E N D M E N T**

267 Remove line 64 and insert:
268 amending s. 125.42, F.S.; authorizing county
269 commissioners to grant licenses for certain work
270 related to communications services within right-of-way
271 limits in a county; amending s. 337.401, F.S.;
272 prohibiting a municipality or county from requiring a
273 utility or communications services provider to provide

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274 proprietary maps of certain facilities; amending s.
275 337.403, F.S.; specifying circumstances under which a
276 utility may relocate its facilities within public
277 rights-of-way; specifying circumstances under which
278 the authority must bear the cost of relocating such
279 utility; providing an exception; specifying
280 circumstances under which the authority must bear the
281 cost of utility work needed to eliminate an
282 unreasonable interference of certain utility
283 facilities within utility easements; providing a
284 statement of important state interest; providing
285 effective dates.

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