## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 391 Location of Utilities
**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee; Local Government Affairs Subcommittee; Ingram
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 896

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Local Government Affairs Subcommittee | 11 Y, 1 N, As CS | Zaborske | Miller |
| 2) Transportation & Economic Development Appropriations Subcommittee | 12 Y, 0 N, As CS | Davis | Davis |
| 3) Regulatory Affairs Committee | | | |

## SUMMARY ANALYSIS

Historically, absent an agreement providing otherwise, utility companies generally have been required to pay, as part of the use, maintenance, improvement, extension or expansion of a public road, highway, or publicly owned rail corridor, to relocate a utility line or facility. In 2014, the Florida Second District Court of Appeal held that a utility is required to pay to move its utility lines from one public utility easement to another public utility easement as part of a city's road construction project. CS/HB 391 revises several provisions related to utilities by making certain statutory provisions applicable only to utility lines and facilities located within the right-of-way limits of a road, rather than those lines facilities located upon, under, over, or along any public road or highway, or publicly owned rail corridor. Specifically, the bill:

- Narrows the authority of a county to grant licenses relating to utility transmission lines by referring only to those lines located *within the right-of-way limits* of any county road or highway, rather than *upon, under, over, or along* the county road or highway.
- Narrows the authority of FDOT and local governmental entities to prescribe and enforce reasonable rules or regulations in relation to utility lines or structures by limiting the statute to placement or maintenance of lines and structures *within the right-of-way limits* of any public road or publicly owned rail corridor, rather than those located *upon, under, over, or along* the county road or highway.
- Prohibits a municipality or county from requiring utilities to resubmit information already in the possession of or previously provided to the municipality or county.
- Alters the requirement for a utility to pay, subject to certain exceptions, to remove or relocate utility lines or facilities that unreasonably interfere with the safe continuous use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor, by:
    - Restricting that requirement only to utilities located *within the right-of-way limits* of the road or rail corridor, rather than *upon, under, over, or along* the road or rail corridor.
    - Requiring that if a governmental authority requires relocation for any purpose other than unreasonable interference, or as a condition or result of a project by a different entity, then the utility is not required to bear the relocation costs.
    - Adding a new exception to the requirement that utility owners pay for removal or relocation of the utilities.

The bill has an indeterminate negative fiscal impact on state or local government expenditures (see Fiscal Analysis Section).

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply. **If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.**

The bill is effective upon becoming a law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Public roads, highways, and rail corridors, as well as water, sewer, gas, power, telephone, television, and other utilities, play an essential role in our daily lives. Originally, the streets throughout our county were "laid out for the horse and buggy age" and, with time, they became "too narrow for the present traffic conditions."[1] Over time, streets were expanded to accommodate traffic and, even today, streets require expansion to accommodate evolving traffic needs. Rather than acquiring separate easements from private landowners, government authorities historically have allowed utilities to lay their lines and facilities within public rights-of-way and utility easements. Under current law regarding the platting of real property,[2] every plat offered for recording must include a dedication by all owners of record of the land to be subdivided.[3] Once a plat is recorded in compliance with the statute, all streets, rights of way, alleys, easements, and public areas shown on the plat are deemed dedicated for public use, for the uses and purposes thereon stated, unless otherwise stated.[4]

Historically, utilities have been required to pay to relocate lines or facilities located within property held for the public's benefit when relocation is required for a public project. For example, in 1905 the U.S. Supreme Court held that a gas utility company, which had an agreement providing it would make reasonable changes when directed by the City of New Orleans, was not entitled to be compensated for relocating certain lines located within streets and alleys in order for the city to develop a drainage system.[5] Similarly, in 1906 the Florida Supreme Court explained that it is a "rule well settled in the law [that with any] grant to individuals and corporations [of] the privilege of occupying the streets and public ways for lawful purposes, such as railroad tracks, poles, wires, and gas and water pipes, such rights are at all times held in subordination to the superior rights of the public, and all necessary and desirable police ordinances, that are reasonable, may be enacted and enforced to protect the public health, safety, and convenience, notwithstanding the same may interfere with legal franchise rights."[6] Accordingly, in 1935, the U.S. Supreme Court held that a utility, which had purchased a right-of-way for pipes and auxiliary telephone lines, had purchased a private right-of-way, or private easement, which the court held was land subject to compensation by the authority seeking to build a highway across it.[7] In 1983, the U.S. Supreme Court reaffirmed the common-law principle that a utility forced to relocate from a public right-of-way must do so at its own expense.[8] Accordingly, under common law, absent an agreement providing otherwise or a private easement pursuant to which the utility locates and runs its lines or facilities, a utility will bear the costs of moving or relocating its utility lines or facilities.

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[1] *Ridgefield Land Co. v. City of Detroit*, 217 N.W. 58, 59 (Mich. 1928).

[2] Current law provides that every plat submitted to the approving agency of a local governing body must be accompanied by a boundary survey of the platted lands, as well as a title opinion of an attorney-at-law licensed in Florida or a certification by an abstractor or a title company, as specified by statute. S. 177.041, F.S. Prior to approval by the appropriate governing body, the plat must be reviewed for conformity to the governing statutes by a professional surveyor and mapper either employed by or under contract to the local governing body, the costs of which must be borne by the legal entity offering the plat for recordation, and evidence of such review must be placed on such plat. S. 177.031(16), F.S

[3] S. 177.081(3), F.S. As used in ch. 177, F.S., "'[e]asement' means any strip of land created by a subdivider for public or private utilities, drainage, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in the reservation of the servitude," s. 177.031(7)(a), F.S., and "'[r]ight-of-way' means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies," S. 177.031(16), F.S.

[4] *Id.*

[5] *New Orleans Gaslight Co. v. Drainage Comm'n of New Orleans*, 197 U.S. 453, 454 (1905).

[6] *Anderson v. Fuller*, 41 So. 684, 688 (1906).

[7] *Panhandle Eastern Pipe Line Co. v. State Highway Comm'n of Kansas*, 294 U.S. 613 (1935). *See City of Grand Prairie v. Am. Tel & Tel. Co.*, 405 F.2d 1144,1146 (5th Cir. 1969) (holding the common law rule that a utility pay for relocation did not apply where the utility facilities were located within a private easement acquired long prior to planning and laying out and construction of a street). *See Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (the Eleventh Circuit Court of Appeals has adopted all of the decisions of the former Fifth Circuit decided prior to October 1, 1981).

[8] *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tele. Co. of Va.*, 464 U.S. 30, 35 (1983).

In 2014, the Florida Second District Court of Appeal ruled that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law[9] and, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, this common law principle governs.[10] This case involved a platted public utility easement, six feet or less on each side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment.[11] The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility's equipment if the municipality required the utility to do so. The Second District Court held that the utility would bear the burden of the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality's expansion of an existing road.[12]

Specific Grant of Authority to Counties to Issue Licenses to Utilities

Section 125.42, F.S., gives counties the specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other utility, and television transmission lines located under, on, over, across and along any county roads or highways.[13] The "under, on, over, across and along" county roads or highway language has been in the statute since 1947.[14]

Specific Grant of Authority to Regulate the Placement & Maintenance of Utility Lines

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property.[15] In relation to the placement and maintenance of utility lines along, across, or on any public road or rail corridor, current law authorizes the Florida Department of Transportation (DOT) and local governmental entities[16] to prescribe and enforce reasonable rules or regulations with reference to the placement and maintenance of the utility lines.[17] "Utility" in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures the statute refers to

[9] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).

[10] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014),

[11] "A right-of-way is not the same thing as an easement. The term 'right-of-way' has been construed to mean ... a right of passage over the land of another.... It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement." *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991) (citation & internal quotation marks omitted). An easement gives someone else a reserved right to use property in a specified manner. *Se. Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) ("[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights."). An easement "does not involve title to or an estate in the land itself." *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).

[12] *Id.* In reaching this conclusion, the Second District distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned "a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property." *Lee County Electric Coop., Inc.*, 2014 WL 2218972, at *3. The Second District in its opinion also distinguished an earlier Second District case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, without citing or discussing relevant cases or statutes, the court determined that the utility, which had a franchise agreement with the City, had a property right in the agreement, and held that the County had to pay the utility's costs in moving its telephone lines located within a right-of-way of an alley dedicated to the City and which was within property the County was purchasing as part of a County building construction.

[13] S. 125.42, F.S.

[14] Ch. 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.

[15] Ss. 337.015 - 337.409, F.S.

[16] These are referred in ss. 337.401-337.404, F.S., as an "authority." S. 337.401(1)(a), F.S.

[17] S. 337.401, F.S.,

as a "utility."[18] Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.[19]

Statutory Requirement that Utility Pay to Move or Remove Utilities & Exceptions to the General Rule

In accordance with the historical requirement that a utility pay to move its lines or facilities, since 1957 Florida law expressly has provided that in the event of widening, repair or reconstruction of a county's public road or highway, the licensee must move or remove the lines at no cost to the county.[20] In 2009 that requirement was made subject to a provision in s. 337.403(1), F.S., relating to agreements entered into after July 1, 2009.[21] In 2014, it was made subject to an additional requirement that the authority[22] find the utility is "unreasonably interfering" with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.[23]

Additionally, beginning in 1957 Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road the authority finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension or expansion of a road.[24] In 1994, that law was amended to include utilities placed upon, under, over, or along any publicly owned rail corridor.[25] Current law requires utility owners, upon 30 days notice, to eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.[26] However, since 1987 numerous exceptions to the general rule that the utility bear the costs under these circumstances have been statutorily carved out.[27]

- In 1987, exceptions were made providing:
  - 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.[28]
  - When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.[29]

- In 1999, an exception was made providing:
  - When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.[30]

- In 2009, exceptions were made providing:
  - If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.[31]

[18] S. 337.401(1)(a), F.S.
[19] *See* City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.
[20] Ch. 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.
[21] Ch. 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S.
[22] "[A]uthority" means DOT and local governmental entities. S. 337.401(1), F.S.
[23] Ch. 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.
[24] Ch. 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.
[25] Ch. 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.]
[26] S. 337.403, F.S.
[27] S. 337.403(1)(a)-(i), F.S.
[28] Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.
[29] Ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.
[30] Ch. 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.
[31] Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.

- If, in an agreement between the utility and an authority 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 the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.[32]
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if 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 the cost of the necessary utility work.[33]

- In 2012, an exception was made providing:
  - An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
    - If the utility was physically located on the particular property before the authority acquired rights in the property,
    - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property, and
    - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility[34] or, pursuant to a 2014 amendment, after due diligence, the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.[35]

- Additionally, in 2014, exceptions were made providing:
  - Municipally-owned or county-owned utility located in a rural area of critical economic concern (RACEC)[36] and DOT determines that the utility is unable, and will not be able within the next 10 years to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.
  - If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the Federal Government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as Federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.[37]

**Effect of Proposed Changes**

The bill changes references to utility lines "upon, under, over, or along" in ss. 125.42, 337.401, 337.403, F.S., to utility lines "within the right-of-way limits." In *Lee County Electric Cooperative, Inc. v. City of Cape Coral*, the court interpreted the "along" language in s. 337.403, F.S., in determining who would

[32] Ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.
[33] Ch. 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.
[34] Ch. 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g), F.S.
[35] Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.
[36] Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."
[37] Ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. S. 337.403(1)(i), F.S.

bear the burden of the cost of moving the utility line.[38] The interpretation of "along," as that term as used in s. 337.403, F.S., informs its similar use in ss. 125.42 and 337.401, F.S.[39] The Second District determined that s. 337.403, F.S., codified common law and, applying the statute, the utility was responsible for bearing the costs of relocation.[40] The court did not find any "cases interpreting the 'along' the road portion of the statute," but determined the statutory language was clear, holding that "[t]he utility lines at issue . . . were located 'along' the road and they were 'interfering' with the City's 'expansion' of the road."[41] By changing the references in ss. 125.42, 337.401, 337.403, F.S., from "upon, under, over, or along" to utility lines "within the right-of-way limits" of a public road, etc., the bill effectively eliminates a county's authority to issue utility transmission line licenses for lines within a utility easement running along the road but not within the right of way; eliminates the authority of the DOT, the county, and the municipality to prescribe and enforce placement or maintenance rules and regulations in relation to a utility easement running along any public road or publicly owned rail corridor; and eliminates the requirement that a utility pay to remove or relocate utilities within a utility easement running along the road or rail corridor that unreasonably interfere with the safe continuous use, maintenance, improvement, extension or expansion of a public road or publicly owned rail corridor.

In Section 1, the bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other utility, television lines, and other communications services[42] is limited to those lines located *within the right-of-way limits* of any county roads or highways.[43] Accordingly, this change narrows a county's historical right to grant licenses to construct such lines within a public easement, running along a road or highway but not within the actual right of way. The bill also makes a conforming change, substituting a reference to "s. 337.403(1)(d)-(i), F.S." with "s. 337.403(1)(d)-(j), F.S." to correspond with a new exception set forth in Section 3 of the bill.

In Section 2, the bill narrows the authority of FDOT and local governmental entities to prescribe and enforce reasonable rules or regulations in relation to the placing and maintaining of electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to as a utility, to the placement or maintenance of such utilities only *within the right-of-way limits* of any public road or publicly owned rail corridors.[44] By changing the language to "right-of-way," the bill strips FDOT and local governments of their authority to prescribe and enforce reasonable rules and regulations regarding the placement and maintenance of the foregoing utilities within a public easement. The bill also changes the expression "other structures referred to as a utility" to mean those structures referred to in ss. 337.401-337.404, F.S.[45]

In addition, the bill provides that a municipality or county, in exercising its general authority over a utility, may not require a utility to resubmit information already in the possession of the municipality or county. The bill separately provides that a municipality or county in exercising its authority to regulate providers of communication services[46] may not require a provider to resubmit information the municipality or

[38] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014).
[39] "When a court interprets a statute, it is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole [and], whenever possible, . . .give full effect to all statutory provisions and construe related statutory provisions in harmony with one another."*Almerico v. RLI Ins.,* 716 So. 2d 774, 779, n.7 (Fla. 1998) (citations & internal quotation marks omitted).
[40] *Id.* at Part II of the opinion.
[41] *Id.*.
[42] The bill adds "other communications services" to the list of utilities in current law.
[43] S. 125.42(1), F.S.
[44] Current law references placement and maintenance "along, across, or on" any road or publicly owned rail corridors, rather than the "right-of-way of" any road or publicly owned rail corridors. S. 337.401(1)(a).
[45] Current law includes only those other structures referred to in s. 337.401, F.S., as a "utility," which includes "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps." S. 337.401(1)(a), F.S.
[46] S. 337.401, F.S

county already has in its possession or was previously provided.[47] The bill does not require any written response to such a request from a communication services provider referencing the previously-provided information.

In Section 3, the bill provides that when, after the requisite notice, a utility owner is required to remove or relocate utilities at its own expense, subject to the numerous exceptions set forth in the statute, because the utility unreasonably interferes with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor,[48] the utility must be located *within the right-of-way limits* of any public road or publicly owned rail corridor.[49] This change contravenes the Second District Court's holding in *Lee County Electric Cooperative, Inc. v. City of Cape Coral*[50] and apparently shifts the historic requirement that utilities pay for relocation because the utility's right to locate lines or facilities is subordinate to the superior authority of the public.

The bill provides that when a governmental authority requires the relocation of a utility for purposes other than unreasonable interference with the safe continuous use, maintenance, improvement, extension, or expansion of a road or rail corridor, or requires the relocation of a utility as a condition or result of a project by an entity other than the authority, the utility does not bear the costs of relocation. Rather, under those circumstances, either the authority or the entity other than the authority bears the costs of relocation.

The bill also adds a new exception to the requirement that utility owners remove or relocate utilities at their own expense when the utility interferes with the safe continuous use, maintenance, improvement, extension, or expansion of the road or rail corridor. The new exception requires the authority to bear the cost of the utility work required to eliminate the interference if the utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise.[51]

B. SECTION DIRECTORY:

Section 1: Amends s. 125.42, F.S., relating to water, sewage, gas, power, telephone, other utility and television line licenses. Limits a county's authority to granting licenses for lines only within the right-of-way limits of a county highway or public road as opposed to "under, on, over, across and along" such highways or roads.

Section 2: Amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors. Limits the ability of defined government authorities to granting licenses only within the right-of-way limits of a county highway or public road as opposed to "under, on, over, across and along" such highways or roads. Also prohibits municipalities or counties exercising authority over a utility from requiring the utility to resubmit information previously provided to the requesting entity. Separately prohibits municipalities or counties from requiring providers of communication services to resubmit information already in the possession of or previously provided to the requesting entity.

Section 3: Amends s. 337.403, F.S., relating to alleviating interference a utility causes to a public road or publicly owned rail corridor. Limits the responsibility of utility providers to pay for relocating their lines and facilities under certain circumstances and requires defined governmental authorities to pay for such relocation.

[47] The term "information" is not defined. Consequently, this provision could be difficult to implement because the term "information" includes knowledge, not just documents, and includes information contained in documents in the local government's possession but not necessarily compiled in a way that makes the information usable for the purpose of
[48] S. 337.403, F.S.
[49] Current law refers to a utility "placed upon, under, over, or along any public road or publicly owned rail corridor." S. 337.403(1), F.S.
[50] *Lee County Electric Coop., Inc.,* 2014 WL 2218972, at *4.
[51] The bill states that the new exception does not impair or restrict, and may not be used to interpret, the terms of any lawful agreement between the authority and a utility owner entered into before the effective date of the act.

Section 4: The act shall take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. In a bill analysis provided to the House of Representatives on February 27, 2015, the Florida Department of Transportation (DOT) states HB 391 would have an indeterminate negative fiscal impact on State expenditures relating to the cost of utility relocation on state roads. To the extent funds are used for such relocations, projects could be adjusted within the confines of the Work Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. The bill appears to be a shift from the common law, under which historically utilities paid to relocate or move the utility, absent an agreement otherwise or the utility being located within a private easement, as part of the use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor or a highway. LGAS staff requested data from representatives of local governments regarding the cost shift that the bill would produce. The City of Cape Coral submitted data showing the cost of moving two utilities as part of three road projects is over $4 million. DOT in its bill analysis found HB 391 would have an indeterminate negative fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Even though the common law historically required utilities to pay to relocate or move the utility, absent an agreement otherwise or the utility being located within a private easement, as part of the use, maintenance, improvement, extension or expansion of a public road or publicly owned rail corridor or a highway, local government representatives and utilities explained that the entities at times reach agreements, separate and distinct from a franchise agreement, relating to who will pay to move or relocate a utility. The utilities argue that the Florida Second District's decision in *Lee County Electric Coop., Inc.*, represents a departure from prior practice in Florida. We requested data from representatives of utilities regarding the cost shift caused by the *Lee County* case. The utilities submitted 14 agreements in which a telecommunications servicer utility was not required to pay to move its lines or facilities on account of a road or other public project. Six of the agreements were between a utility and DOT. The other agreements were between local governments and a utility. Several of the agreements were after the filing of the Lee County case in the trial court, with some dating after the 2014 appellate decision in the case.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because utilities currently are located or may be located in the future within utility easements and an authority would be required to pay for moving or relocating the utility if it is located within said easement and not within a right-of-way for any public road or publicly owned rail corridors. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

   If the changes proposed in the bill do alter the common law, "[i]t is a well-established principle of statutory construction that '[t]he common law ... ought not to be deemed repealed, unless the language of a statute be clear and explicit for this purpose.'"[52]

B. RULE-MAKING AUTHORITY:

To the extent DOT has any rules affected by this legislation, it may need to amend those rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits municipalities or counties from requiring utilities to resubmit information previously provided to local governments or authorities, but does not define the term "information." It is unclear whether the bill pertains only to written documentation or to all forms of information, which may make compliance uncertain.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The strike-all amendment otherwise conforms the bill to the Senate version, SB 896, but adds additional language prohibiting a municipality, county, or other governmental authority from requesting information already submitted by a utility provider. This analysis is drafted to the committee substitute as passed by the Local Government Affairs Subcommittee.

On March 12, 2015, the Transportation & Economic Development Appropriations Subcommittee adopted one amendment which removed duplicative uses of the term authority from the bill. The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.

[52] *Norfolk Redevelopment & Hous. Auth.*, 464 U.S. at, 35 (1983), quoting *Fairfax's Devisee v. Hunter's Lessee,* 11 U.S. (7 Cranch) 603, 623, 3 L. Ed. 453 (1812).