

1                   A bill to be entitled  
2           An act relating to the location of utilities; amending  
3           s. 125.42, F.S.; authorizing the board of county  
4           commissioners to grant a license to work on or operate  
5           specified utility and television lines only within the  
6           right-of-way limits of certain county or public  
7           highways or roads; conforming cross-references;  
8           amending s. 337.401, F.S.; authorizing the Department  
9           of Transportation and certain local governmental  
10          entities to prescribe and enforce rules or regulations  
11          regarding placing and maintaining specified structures  
12          only within the right-of-way limits of roads or  
13          publicly owned rail corridors under their respective  
14          jurisdictions; prohibiting a municipality or county  
15          from requiring a provider of communication services to  
16          resubmit information already in the possession of, or  
17          previously provided to, the municipality or county;  
18          amending s. 337.403, F.S.; requiring a utility owner,  
19          under certain circumstances, to initiate, at its own  
20          expense, the work necessary to alleviate an  
21          interference to a public road or publicly owned rail  
22          corridor which is caused by a utility if it is within  
23          the right-of-way limits of the public road or publicly  
24          owned rail corridor; requiring an authority or an  
25          entity other than the authority to bear the costs of  
26          relocating a utility in certain circumstances;

27 providing applicability; requiring the authority to  
 28 bear the cost of the utility work necessary to  
 29 eliminate an unreasonable interference if the utility  
 30 is located within a certain utility easement;  
 31 conforming a cross-reference; providing a directive to  
 32 the Division of Law Revision and Information;  
 33 providing an effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Section 125.42, Florida Statutes, is amended to  
 38 read:

39 125.42 Water, sewage, gas, power, telephone, other  
 40 utility, and television lines within the right-of-way limits of  
 41 ~~along~~ county roads and highways.-

42 (1) The board of county commissioners, with respect to  
 43 property located without the corporate limits of any  
 44 municipality, is authorized to grant a license to any person or  
 45 private corporation to construct, maintain, repair, operate, and  
 46 remove lines for the transmission of water, sewage, gas, power,  
 47 telephone, other public utilities, and television within the  
 48 right-of-way limits of ~~under, on, over, across and along~~ any  
 49 county highway or any public road or highway acquired by the  
 50 county or public by purchase, gift, devise, dedication, or  
 51 prescription. However, the board of county commissioners shall  
 52 include in any instrument granting such license adequate

53 provisions:

54 (a) To prevent the creation of any obstructions or  
55 conditions which are or may become dangerous to the traveling  
56 public;

57 (b) To require the licensee to repair any damage or injury  
58 to the road or highway by reason of the exercise of the  
59 privileges granted in any instrument creating such license and  
60 to repair the road or highway promptly, restoring it to a  
61 condition at least equal to that which existed immediately prior  
62 to the infliction of such damage or injury;

63 (c) Whereby the licensee shall hold the board of county  
64 commissioners and members thereof harmless from the payment of  
65 any compensation or damages resulting from the exercise of the  
66 privileges granted in any instrument creating the license; and

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

69 (2) A license may be granted in perpetuity or for a term  
70 of years, subject, however, to termination by the licensor, in  
71 the event the road or highway is closed, abandoned, vacated,  
72 discontinued, or reconstructed.

73 (3) The board of county commissioners is authorized to  
74 grant exclusive or nonexclusive licenses for the purposes stated  
75 herein for television.

76 (4) This law is intended to provide an additional method  
77 for the granting of licenses and shall not be construed to  
78 repeal any law now in effect relating to the same subject.

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

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

88 337.401 Use of right-of-way for utilities subject to  
 89 regulation; permit; fees.—

90 (1)(a) The department and local governmental entities,  
 91 referred to in ss. 337.401-337.404 as the "authority," that have  
 92 jurisdiction and control of public roads or publicly owned rail  
 93 corridors are authorized to prescribe and enforce reasonable  
 94 rules or regulations with reference to the placing and  
 95 maintaining within the right-of-way limits of ~~along, across, or~~  
 96 ~~on~~ any road or publicly owned rail corridors under their  
 97 respective jurisdictions any electric transmission, telephone,  
 98 telegraph, or other communications services lines; pole lines;  
 99 poles; railways; ditches; sewers; water, heat, or gas mains;  
 100 pipelines; fences; gasoline tanks and pumps; or other structures  
 101 referred to in ss. 337.401-337.404 ~~this section~~ as the  
 102 "utility." The department may enter into a permit-delegation  
 103 agreement with a governmental entity if issuance of a permit is  
 104 based on requirements that the department finds will ensure the

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105 safety and integrity of facilities of the Department of  
106 Transportation; however, the permit-delegation agreement does  
107 not apply to facilities of electric utilities as defined in s.  
108 366.02(2).

109 (3)

110 (b) Registration described in paragraph (a) does not  
111 establish a right to place or maintain, or priority for the  
112 placement or maintenance of, a communications facility in roads  
113 or rights-of-way of a municipality or county. Each municipality  
114 and county retains the authority to regulate and manage  
115 municipal and county roads or rights-of-way in exercising its  
116 police power. Any rules or regulations adopted by a municipality  
117 or county which govern the occupation of its roads or rights-of-  
118 way by providers of communications services must be related to  
119 the placement or maintenance of facilities in such roads or  
120 rights-of-way, must be reasonable and nondiscriminatory, and may  
121 include only those matters necessary to manage the roads or  
122 rights-of-way of the municipality or county. In exercising its  
123 authority over providers of communication services under this  
124 section, a municipality or county may not require a provider of  
125 communication services to resubmit information already in the  
126 possession of the municipality or county or previously provided  
127 to the municipality or county.

128 Section 3. Subsection (1) of section 337.403, Florida  
129 Statutes, is amended, and paragraph (j) is added to that  
130 subsection, to read:

131           337.403 Interference caused by utility; expenses.—  
132           (1) If a utility that is within the right-of-way limits of  
133 ~~placed upon, under, over, or along~~ any public road or publicly  
134 owned rail corridor is found by the authority to be unreasonably  
135 interfering in any way with the convenient, safe, or continuous  
136 use, or the maintenance, improvement, extension, or expansion,  
137 of such public road or publicly owned rail corridor, the utility  
138 owner shall, upon 30 days' written notice to the utility or its  
139 agent by the authority, initiate the work necessary to alleviate  
140 the interference at its own expense except as provided in  
141 paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within  
142 such reasonable time as stated in the notice or such time as  
143 agreed to by the authority and the utility owner. If an  
144 authority requires the relocation of a utility for purposes not  
145 described in this subsection, or if the relocation is required  
146 as a condition or result of a project by an entity other than  
147 the authority, the authority or entity other than the authority  
148 shall bear the costs of relocating the utility; however, this  
149 requirement does not impair or restrict, and may not be used to  
150 interpret, the terms of any lawful agreement between the  
151 authority and a utility owner entered into before the effective  
152 date of this act.

153           (a) If the relocation of utility facilities, as referred  
154 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
155 84-627, is necessitated by the construction of a project on the  
156 federal-aid interstate system, including extensions thereof

157 within urban areas, and the cost of the project is eligible and  
158 approved for reimbursement by the Federal Government to the  
159 extent of 90 percent or more under the Federal Aid Highway Act,  
160 or any amendment thereof, ~~then in that event~~ the utility owning  
161 or operating such facilities shall perform any necessary work  
162 upon notice from the department, and the state shall pay the  
163 entire expense properly attributable to such work after  
164 deducting therefrom any increase in the value of a new facility  
165 and any salvage value derived from an old facility.

166 (b) When a joint agreement between the department and the  
167 utility is executed for utility work to be accomplished as part  
168 of a contract for construction of a transportation facility, the  
169 department may participate in those utility work costs that  
170 exceed the department's official estimate of the cost of the  
171 work by more than 10 percent. The amount of such participation  
172 is limited to the difference between the official estimate of  
173 all the work in the joint agreement plus 10 percent and the  
174 amount awarded for this work in the construction contract for  
175 such work. The department may not participate in any utility  
176 work costs that occur as a result of changes or additions during  
177 the course of the contract.

178 (c) When an agreement between the department and utility  
179 is executed for utility work to be accomplished in advance of a  
180 contract for construction of a transportation facility, the  
181 department may participate in the cost of clearing and grubbing  
182 necessary to perform such work.

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

198 (e) If, under an agreement between a utility and the  
199 authority entered into after July 1, 2009, the utility conveys,  
200 subordinates, or relinquishes a compensable property right to  
201 the authority for the purpose of accommodating the acquisition  
202 or use of the right-of-way by the authority, without the  
203 agreement expressly addressing future responsibility for the  
204 cost of necessary utility work, the authority shall bear the  
205 cost of removal or relocation. This paragraph does not impair or  
206 restrict, and may not be used to interpret, the terms of any  
207 such agreement entered into before July 1, 2009.

208 (f) If the utility is an electric facility being relocated



209 | underground in order to enhance vehicular, bicycle, and  
210 | pedestrian safety and in which ownership of the electric  
211 | facility to be placed underground has been transferred from a  
212 | private to a public utility within the past 5 years, the  
213 | department shall incur all costs of the necessary utility work.

214 |       (g) An authority may bear the costs of utility work  
215 | required to eliminate an unreasonable interference when the  
216 | utility is not able to establish that it has a compensable  
217 | property right in the particular property where the utility is  
218 | located if:

219 |       1. The utility was physically located on the particular  
220 | property before the authority acquired rights in the property;

221 |       2. The utility demonstrates that it has a compensable  
222 | property right in adjacent properties along the alignment of the  
223 | utility or, after due diligence, certifies that the utility does  
224 | not have evidence to prove or disprove that it has a compensable  
225 | property right in the particular property where the utility is  
226 | located; and

227 |       3. The information available to the authority does not  
228 | establish the relative priorities of the authority's and the  
229 | utility's interests in the particular property.

230 |       (h) If a municipally owned utility or county-owned utility  
231 | is located in a rural area of critical economic concern, as  
232 | defined in s. 288.0656(2), and the department determines that  
233 | the utility is unable, and will not be able within the next 10  
234 | years, to pay for the cost of utility work necessitated by a

235 department project on the State Highway System, the department  
236 may pay, in whole or in part, the cost of such utility work  
237 performed by the department or its contractor.

238 (i) If the relocation of utility facilities is  
239 necessitated by the construction of a commuter rail service  
240 project or an intercity passenger rail service project and the  
241 cost of the project is eligible and approved for reimbursement  
242 by the Federal Government, then in that event the utility owning  
243 or operating such facilities located by permit on a department-  
244 owned rail corridor shall perform any necessary utility  
245 relocation work upon notice from the department, and the  
246 department shall pay the expense properly attributable to such  
247 utility relocation work in the same proportion as federal funds  
248 are expended on the commuter rail service project or an  
249 intercity passenger rail service project after deducting  
250 therefrom any increase in the value of a new facility and any  
251 salvage value derived from an old facility. In no event shall  
252 the state be required to use state dollars for such utility  
253 relocation work. This paragraph does not apply to any phase of  
254 the Central Florida Commuter Rail project, known as SunRail.

255 (j) If a utility is located within an existing and valid  
256 utility easement granted by recorded plat, regardless of whether  
257 such land was subsequently acquired by the authority by  
258 dedication, transfer of fee, or otherwise, the authority shall  
259 bear the cost of the utility work required to eliminate an  
260 unreasonable interference.

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261           Section 4. The Division of Law Revision and Information is  
262 directed to replace the phrase "the effective date of this act"  
263 wherever it occurs in this act with the date the act becomes a  
264 law.

265           Section 5. This act shall take effect upon becoming a law.