

1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; authorizing a board of county
4 commissioners to grant a license to work on or operate
5 specified communications services lines within the
6 right-of-way limits of certain county or public
7 highways or roads; conforming a cross-reference;
8 amending s. 337.401, F.S.; specifying that the
9 Department of Transportation and certain local
10 governmental entities may prescribe and enforce rules
11 or regulations regarding the placement and maintenance
12 of specified structures and lines within the right-of-
13 ways of roads or publicly owned rail corridors under
14 their respective jurisdictions; prohibiting a
15 municipality or county from requiring a utility or a
16 communications services provider to resubmit
17 proprietary maps of previously permitted facilities;
18 amending s. 337.403, F.S.; specifying that a utility
19 located within certain right-of-way limits must
20 initiate and pay for the work necessary to alleviate
21 any interference to the use of certain public roads or
22 rail corridors; requiring an authority to pay the cost
23 of requiring the relocation of a utility, under
24 certain circumstances; requiring an entity other than
25 the authority to pay the cost of certain relocations
26 of utilities under certain circumstances; requiring an

27 authority to pay the cost of utility work required to
 28 eliminate unreasonable interference within certain
 29 existing utility easements; providing a finding of
 30 important state interest; providing an effective date.

31

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

33

34 Section 1. Section 125.42, Florida Statutes, is amended to
 35 read:

36 125.42 Water, sewage, gas, power, telephone, other
 37 utility, and television lines within the right-of-way limits of
 38 ~~along~~ county roads and highways.-

39 (1) The board of county commissioners, with respect to
 40 property located without the corporate limits of any
 41 municipality, is authorized to grant a license to any person or
 42 private corporation to construct, maintain, repair, operate, and
 43 remove lines for the transmission of water, sewage, gas, power,
 44 telephone, other public utilities, and television, or other
 45 communications services as defined in s. 202.11(1) under, on,
 46 over, across, or within the right-of-way limits of ~~and along~~ any
 47 county highway or any public road or highway acquired by the
 48 county or public by purchase, gift, devise, dedication, or
 49 prescription. However, the board of county commissioners shall
 50 include in any instrument granting such license adequate
 51 provisions:

52 (a) To prevent the creation of any obstructions or

53 conditions which are or may become dangerous to the traveling
54 public;

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

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

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

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

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

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

77 (5) In the event of widening, repair, or reconstruction of
78 any such road, the licensee shall move or remove such water,

79 sewage, gas, power, telephone, and other utility lines and
 80 television lines at no cost to the county should they be found
 81 by the county to be unreasonably interfering, except as provided
 82 in s. 337.403(1)(d)-(j) ~~337.403(1)(d)-(i)~~.

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

86 337.401 Use of right-of-way for utilities subject to
 87 regulation; permit; fees.—

88 (1) (a) The department and local governmental entities,
 89 referred to in this section and ss. 337.402-337.404 ~~ss. 337.401-~~
 90 ~~337.404~~ as the "authority," that have jurisdiction and control
 91 of public roads or publicly owned rail corridors are authorized
 92 to prescribe and enforce reasonable rules or regulations with
 93 reference to the placing and maintaining ~~along,~~ across, ~~or on,~~
 94 or within the right-of-way limits of any road or publicly owned
 95 rail corridors under their respective jurisdictions any electric
 96 transmission, telephone, telegraph, or other communications
 97 services lines; pole lines; poles; railways; ditches; sewers;
 98 water, heat, or gas mains; pipelines; fences; gasoline tanks and
 99 pumps; or other structures referred to in this section and ss.
 100 337.402-337.404 ~~this section~~ as the "utility." The department
 101 may enter into a permit-delegation agreement with a governmental
 102 entity if issuance of a permit is based on requirements that the
 103 department finds will ensure the safety and integrity of
 104 facilities of the Department of Transportation; however, the

105 permit-delegation agreement does not apply to facilities of
106 electric utilities as defined in s. 366.02(2).

107 (2) The authority may grant to any person who is a
108 resident of this state, or to any corporation which is organized
109 under the laws of this state or licensed to do business within
110 this state, the use of a right-of-way for the utility in
111 accordance with such rules or regulations as the authority may
112 adopt. No utility shall be installed, located, or relocated
113 unless authorized by a written permit issued by the authority.
114 However, for public roads or publicly owned rail corridors under
115 the jurisdiction of the department, a utility relocation
116 schedule and relocation agreement may be executed in lieu of a
117 written permit. The permit shall require the permitholder to be
118 responsible for any damage resulting from the issuance of such
119 permit. In exercising its authority over a utility under this
120 section, a municipality or county may not require a utility to
121 provide proprietary maps of facilities that were previously
122 subject to a permit from the authority. The authority may
123 initiate injunctive proceedings as provided in s. 120.69 to
124 enforce provisions of this subsection or any rule or order
125 issued or entered into pursuant thereto.

126 (3)

127 (b) Registration described in paragraph (a) does not
128 establish a right to place or maintain, or priority for the
129 placement or maintenance of, a communications facility in roads
130 or rights-of-way of a municipality or county. Each municipality

131 and county retains the authority to regulate and manage
132 municipal and county roads or rights-of-way in exercising its
133 police power. Any rules or regulations adopted by a municipality
134 or county which govern the occupation of its roads or rights-of-
135 way by providers of communications services must be related to
136 the placement or maintenance of facilities in such roads or
137 rights-of-way, must be reasonable and nondiscriminatory, and may
138 include only those matters necessary to manage the roads or
139 rights-of-way of the municipality or county. In exercising its
140 authority over providers of communications services under this
141 section, a municipality or county may not require a
142 communications services provider to provide proprietary maps of
143 facilities that were previously subject to a permit from the
144 authority.

145 Section 3. Subsection (1) of section 337.403, Florida
146 Statutes, is amended to read:

147 337.403 Interference caused by utility; expenses.—

148 (1) If a utility that is placed upon, under, over, or
149 within the right-of-way limits of ~~along~~ any public road or
150 publicly owned rail corridor is found by the authority to be
151 unreasonably interfering in any way with the convenient, safe,
152 or continuous use, or the maintenance, improvement, extension,
153 or expansion, of such public road or publicly owned rail
154 corridor, the utility owner shall, upon 30 days' written notice
155 to the utility or its agent by the authority, initiate the work
156 necessary to alleviate the interference at its own expense

157 | except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
158 | be completed within such reasonable time as stated in the notice
159 | or such time as agreed to by the authority and the utility
160 | owner. If an authority requires the relocation of a utility for
161 | purposes not described in this subsection and the utility owner
162 | is authorized by state or common law or state or local agreement
163 | to place facilities in the public rights-of-way, the authority
164 | must bear the cost of relocating the utility. If relocation is
165 | required as a condition or result of a project by an entity
166 | other than an authority, the entity other than the authority
167 | must bear the cost of relocating the utility except to the
168 | extent that the relocation would otherwise be required in
169 | connection with a transportation improvement identified in the
170 | authority's capital improvement schedule and scheduled for
171 | construction within 5 years. This subsection does not impair any
172 | right of the holder of a private railroad right-of-way or
173 | obligate the holder of such private railroad right-of-way to
174 | bear the relocation cost in such railroad right-of-way, subject
175 | to any agreement between the holder of the private railroad
176 | right-of-way and a utility that otherwise allocates such
177 | relocation cost. This subsection also does not affect a lawfully
178 | issued permit or lawful contract entered into between an
179 | authority and a utility before April 15, 2015. To the extent
180 | that an authority is required by this subsection to bear the
181 | cost of relocating a utility, the authority shall pay the entire
182 | expense properly attributable to such work after deducting any

183 increase in the value of a new facility and any salvage value
184 derived from an old facility.

185 (a) If the relocation of utility facilities, as referred
186 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
187 84-627, is necessitated by the construction of a project on the
188 federal-aid interstate system, including extensions thereof
189 within urban areas, and the cost of the project is eligible and
190 approved for reimbursement by the Federal Government to the
191 extent of 90 percent or more under the Federal Aid Highway Act,
192 or any amendment thereof, then in that event the utility owning
193 or operating such facilities shall perform any necessary work
194 upon notice from the department, and the state shall pay the
195 entire expense properly attributable to such work after
196 deducting therefrom any increase in the value of a new facility
197 and any salvage value derived from an old facility.

198 (b) When a joint agreement between the department and the
199 utility is executed for utility work to be accomplished as part
200 of a contract for construction of a transportation facility, the
201 department may participate in those utility work costs that
202 exceed the department's official estimate of the cost of the
203 work by more than 10 percent. The amount of such participation
204 is limited to the difference between the official estimate of
205 all the work in the joint agreement plus 10 percent and the
206 amount awarded for this work in the construction contract for
207 such work. The department may not participate in any utility
208 work costs that occur as a result of changes or additions during

209 the course of the contract.

210 (c) When an agreement between the department and utility
211 is executed for utility work to be accomplished in advance of a
212 contract for construction of a transportation facility, the
213 department may participate in the cost of clearing and grubbing
214 necessary to perform such work.

215 (d) If the utility facility was initially installed to
216 exclusively serve the authority or its tenants, or both, the
217 authority shall bear the costs of the utility work. However, the
218 authority is not responsible for the cost of utility work
219 related to any subsequent additions to that facility for the
220 purpose of serving others. For a county or municipality, if such
221 utility facility was installed in the right-of-way as a means to
222 serve a county or municipal facility on a parcel of property
223 adjacent to the right-of-way and if the intended use of the
224 county or municipal facility is for a use other than
225 transportation purposes, the obligation of the county or
226 municipality to bear the costs of the utility work shall extend
227 only to utility work on the parcel of property on which the
228 facility of the county or municipality originally served by the
229 utility facility is located.

230 (e) If, under an agreement between a utility and the
231 authority entered into after July 1, 2009, the utility conveys,
232 subordinates, or relinquishes a compensable property right to
233 the authority for the purpose of accommodating the acquisition
234 or use of the right-of-way by the authority, without the

235 agreement expressly addressing future responsibility for the
236 cost of necessary utility work, the authority shall bear the
237 cost of removal or relocation. This paragraph does not impair or
238 restrict, and may not be used to interpret, the terms of any
239 such agreement entered into before July 1, 2009.

240 (f) If the utility is an electric facility being relocated
241 underground in order to enhance vehicular, bicycle, and
242 pedestrian safety and in which ownership of the electric
243 facility to be placed underground has been transferred from a
244 private to a public utility within the past 5 years, the
245 department shall incur all costs of the necessary utility work.

246 (g) An authority may bear the costs of utility work
247 required to eliminate an unreasonable interference when the
248 utility is not able to establish that it has a compensable
249 property right in the particular property where the utility is
250 located if:

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

253 2. The utility demonstrates that it has a compensable
254 property right in adjacent properties along the alignment of the
255 utility or, after due diligence, certifies that the utility does
256 not have evidence to prove or disprove that it has a compensable
257 property right in the particular property where the utility is
258 located; and

259 3. The information available to the authority does not
260 establish the relative priorities of the authority's and the

261 utility's interests in the particular property.

262 (h) If a municipally owned utility or county-owned utility
263 is located in a rural area of critical economic concern, as
264 defined in s. 288.0656(2), and the department determines that
265 the utility is unable, and will not be able within the next 10
266 years, to pay for the cost of utility work necessitated by a
267 department project on the State Highway System, the department
268 may pay, in whole or in part, the cost of such utility work
269 performed by the department or its contractor.

270 (i) If the relocation of utility facilities is
271 necessitated by the construction of a commuter rail service
272 project or an intercity passenger rail service project and the
273 cost of the project is eligible and approved for reimbursement
274 by the Federal Government, then in that event the utility owning
275 or operating such facilities located by permit on a department-
276 owned rail corridor shall perform any necessary utility
277 relocation work upon notice from the department, and the
278 department shall pay the expense properly attributable to such
279 utility relocation work in the same proportion as federal funds
280 are expended on the commuter rail service project or an
281 intercity passenger rail service project after deducting
282 therefrom any increase in the value of a new facility and any
283 salvage value derived from an old facility. In no event shall
284 the state be required to use state dollars for such utility
285 relocation work. This paragraph does not apply to any phase of
286 the Central Florida Commuter Rail project, known as SunRail.

287 (j) If a utility is lawfully located within an existing
288 and valid utility easement granted by recorded plat, regardless
289 of whether such land was subsequently acquired by the authority
290 by dedication, transfer of fee, or otherwise, the authority must
291 bear the cost of the utility work required to eliminate an
292 unreasonable interference.

293 Section 4. The Legislature finds that a proper and
294 legitimate state purpose is served by clarifying a utility's
295 responsibility for relocating its facilities within a right of
296 way or within a utility easement granted by recorded plat.
297 Therefore, the Legislature determines and declares that this act
298 fulfills an important state interest.

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