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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) The board of county commissioners, with respect to



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11 property located without the corporate limits of any
12 municipality, is authorized to grant a license to any person or
13 private corporation to construct, maintain, repair, operate, and
14 remove lines for the transmission of water, sewage, gas, power,
15 telephone, other public utilities, and television, or other
16 communications services as defined in s. 202.11(1) under, on,
17 over, across, or within the right-of-way limits of ~~and along~~ any
18 county highway or any public road or highway acquired by the
19 county or public by purchase, gift, devise, dedication, or
20 prescription. However, the board of county commissioners shall
21 include in any instrument granting such license adequate
22 provisions:

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

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

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

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

38 (2) A license may be granted in perpetuity or for a term of
39 years, subject, however, to termination by the licensor, in the



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40 event the road or highway is closed, abandoned, vacated,
41 discontinued, or reconstructed.

42 (3) The board of county commissioners is authorized to
43 grant exclusive or nonexclusive licenses for the purposes stated
44 herein for television.

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

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

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

57 337.401 Use of right-of-way for utilities subject to
58 regulation; permit; fees.-

59 (1) (a) The department and local governmental entities,
60 referred to in this section and ss. 337.402-337.404 ~~ss. 337.401-~~
61 ~~337.404~~ as the "authority," that have jurisdiction and control
62 of public roads or publicly owned rail corridors are authorized
63 to prescribe and enforce reasonable rules or regulations with
64 reference to the placing and maintaining ~~along~~, across, ~~or on,~~
65 or within the right-of-way limits of any road or publicly owned
66 rail corridors under their respective jurisdictions any electric
67 transmission, telephone, telegraph, or other communications
68 services lines; pole lines; poles; railways; ditches; sewers;



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69 water, heat, or gas mains; pipelines; fences; gasoline tanks and
70 pumps; or other structures referred to in this section and ss.
71 337.402-337.404 ~~this section~~ as the "utility." The department
72 may enter into a permit-delegation agreement with a governmental
73 entity if issuance of a permit is based on requirements that the
74 department finds will ensure the safety and integrity of
75 facilities of the Department of Transportation; however, the
76 permit-delegation agreement does not apply to facilities of
77 electric utilities as defined in s. 366.02(2).

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

97 (3)



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98 (b) Registration described in paragraph (a) does not
99 establish a right to place or maintain, or priority for the
100 placement or maintenance of, a communications facility in roads
101 or rights-of-way of a municipality or county. Each municipality
102 and county retains the authority to regulate and manage
103 municipal and county roads or rights-of-way in exercising its
104 police power. Any rules or regulations adopted by a municipality
105 or county which govern the occupation of its roads or rights-of-
106 way by providers of communications services must be related to
107 the placement or maintenance of facilities in such roads or
108 rights-of-way, must be reasonable and nondiscriminatory, and may
109 include only those matters necessary to manage the roads or
110 rights-of-way of the municipality or county. In exercising its
111 authority over providers of communications services under this
112 section, a municipality or county may not require a
113 communications services provider to provide proprietary maps of
114 facilities that were previously subject to a permit from the
115 authority.

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

118 337.403 Interference caused by utility; expenses.—

119 (1) If a utility that is placed upon, under, over, or
120 within the right-of-way limits of ~~along~~ any public road or
121 publicly owned rail corridor is found by the authority to be
122 unreasonably interfering in any way with the convenient, safe,
123 or continuous use, or the maintenance, improvement, extension,
124 or expansion, of such public road or publicly owned rail
125 corridor, the utility owner shall, upon 30 days' written notice
126 to the utility or its agent by the authority, initiate the work



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127 necessary to alleviate the interference at its own expense
128 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
129 be completed within such reasonable time as stated in the notice
130 or such time as agreed to by the authority and the utility
131 owner. If an authority requires the relocation of a utility for
132 purposes not described in this subsection and the utility owner
133 is authorized by state or common law or state or local agreement
134 to place facilities in the public rights-of-way, the authority
135 must bear the cost of relocating the utility. If relocation is
136 required as a condition or result of a project by an entity
137 other than an authority, the entity other than the authority
138 must bear the cost of relocating the utility except to the
139 extent that the relocation would otherwise be required in
140 connection with a transportation improvement identified in the
141 authority's capital improvement schedule and scheduled for
142 construction within 5 years. This subsection does not impair any
143 right of the holder of a private railroad right-of-way or
144 obligate the holder of such private railroad right-of-way to
145 bear the relocation cost in such railroad right-of-way, subject
146 to any agreement between the holder of the private railroad
147 right-of-way and a utility which otherwise allocates such
148 relocation cost. This subsection also does not affect a lawfully
149 issued permit or lawful contract entered into between an
150 authority and a utility before April 15, 2015. To the extent
151 that an authority is required by this subsection to bear the
152 cost of relocating a utility, the authority shall pay the entire
153 expense properly attributable to such work after deducting any
154 increase in the value of a new facility and any salvage value
155 derived from an old facility.



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

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

181 (c) When an agreement between the department and utility is
182 executed for utility work to be accomplished in advance of a
183 contract for construction of a transportation facility, the
184 department may participate in the cost of clearing and grubbing



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185 necessary to perform such work.

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

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

211 (f) If the utility is an electric facility being relocated
212 underground in order to enhance vehicular, bicycle, and
213 pedestrian safety and in which ownership of the electric



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214 facility to be placed underground has been transferred from a
215 private to a public utility within the past 5 years, the
216 department shall incur all costs of the necessary utility work.

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

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

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

230 3. The information available to the authority does not
231 establish the relative priorities of the authority's and the
232 utility's interests in the particular property.

233 (h) If a municipally owned utility or county-owned utility
234 is located in a rural area of critical economic concern, as
235 defined in s. 288.0656(2), and the department determines that
236 the utility is unable, and will not be able within the next 10
237 years, to pay for the cost of utility work necessitated by a
238 department project on the State Highway System, the department
239 may pay, in whole or in part, the cost of such utility work
240 performed by the department or its contractor.

241 (i) If the relocation of utility facilities is necessitated
242 by the construction of a commuter rail service project or an



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

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

264 Section 4. The Legislature finds that a proper and
265 legitimate state purpose is served by clarifying a utility's
266 responsibility for relocating its facilities within a right-of-
267 way or within a utility easement granted by recorded plat.
268 Therefore, the Legislature determines and declares that this act
269 fulfills an important state interest.

270 Section 5. This act shall take effect upon becoming a law.
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272 ===== T I T L E A M E N D M E N T =====

273 And the title is amended as follows:

274 Delete everything before the enacting clause

275 and insert:

276 A bill to be entitled

277 An act relating to the location of utilities; amending
278 s. 125.42, F.S.; authorizing a board of county
279 commissioners to grant a license to work on, operate,
280 and remove specified communications services lines
281 within the right-of-way limits of certain county or
282 public highways or roads; conforming a cross-
283 reference; amending s. 337.401, F.S.; specifying that
284 the Department of Transportation and certain local
285 governmental entities may prescribe and enforce rules
286 or regulations regarding the placement and maintenance
287 of specified structures and lines within the right-of-
288 ways of roads or publicly owned rail corridors under
289 their respective jurisdictions; prohibiting a
290 municipality or county from requiring a utility or a
291 communications services provider to provide
292 proprietary maps of previously permitted facilities;
293 amending s. 337.403, F.S.; specifying that a utility
294 located within certain right-of-way limits must
295 initiate and pay for the work necessary to alleviate
296 any interference to the use of certain public roads or
297 rail corridors; requiring an authority to pay the cost
298 of requiring the relocation of a utility under certain
299 circumstances; requiring an entity other than the
300 authority to pay the cost of certain relocations of



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301 utilities under certain circumstances; providing
302 applicability; requiring the authority to pay the
303 entire expense if it is required under certain
304 circumstances to bear the cost of relocating a utility
305 after certain deductions; requiring an authority to
306 pay the cost of utility work required to eliminate
307 unreasonable interference within certain existing
308 utility easements; providing a finding of important
309 state interest; providing an effective date.