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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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The Committee on Community Affairs (Brandes) 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



885778

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 under, on, over, across or within the
17 right-of-way limits of ~~and along~~ any county highway or any
18 public road or highway acquired by the county or public by
19 purchase, gift, devise, dedication, or prescription. However,
20 the board of county commissioners shall include in any
21 instrument granting such license adequate provisions:

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

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

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

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

37 (2) A license may be granted in perpetuity or for a term of
38 years, subject, however, to termination by the licensor, in the
39 event the road or highway is closed, abandoned, vacated,



885778

40 discontinued, or reconstructed.

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

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

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

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

56 337.401 Use of right-of-way for utilities subject to
57 regulation; permit; fees.—

58 (1) (a) The department and local governmental entities,
59 referred to in this section and in ss. 337.402, 337.403, and
60 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
61 jurisdiction and control of public roads or publicly owned rail
62 corridors are authorized to prescribe and enforce reasonable
63 rules or regulations with reference to the placing and
64 maintaining ~~along,~~ across, or on, or within the right-of-way
65 limits of any road or publicly owned rail corridors under their
66 respective jurisdictions any electric transmission, telephone,
67 telegraph, or other communications services lines; pole lines;
68 poles; railways; ditches; sewers; water, heat, or gas mains;



885778

69 pipelines; fences; gasoline tanks and pumps; or other structures
70 referred to in this section and in ss. 337.402, 337.403, and
71 337.404 ~~this section~~ as the "utility." The department may enter
72 into a permit-delegation agreement with a governmental entity if
73 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 where such facilities
93 have been previously subject to a permit from the authority. The
94 authority may initiate injunctive proceedings as provided in s.
95 120.69 to enforce provisions of this subsection or any rule or
96 order issued or entered into pursuant thereto.

97 (3)



885778

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 provider of
113 communications services to provide proprietary maps of
114 facilities where such facilities have been previously subject to
115 a permit from the 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



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, the authority shall
133 bear the cost of relocating the utility. If the relocation is
134 required as a condition or result of a project by an entity
135 other than an authority, the entity other than the authority
136 shall bear the costs of relocating the utility.

137 (a) If the relocation of utility facilities, as referred to
138 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
139 84-627, is necessitated by the construction of a project on the
140 federal-aid interstate system, including extensions thereof
141 within urban areas, and the cost of the project is eligible and
142 approved for reimbursement by the Federal Government to the
143 extent of 90 percent or more under the Federal Aid Highway Act,
144 or any amendment thereof, ~~then in that event~~ the utility owning
145 or operating such facilities shall perform any necessary work
146 upon notice from the department, and the state shall pay the
147 entire expense properly attributable to such work after
148 deducting therefrom any increase in the value of a new facility
149 and any salvage value derived from an old facility.

150 (b) When a joint agreement between the department and the
151 utility is executed for utility work to be accomplished as part
152 of a contract for construction of a transportation facility, the
153 department may participate in those utility work costs that
154 exceed the department's official estimate of the cost of the
155 work by more than 10 percent. The amount of such participation



885778

156 is limited to the difference between the official estimate of
157 all the work in the joint agreement plus 10 percent and the
158 amount awarded for this work in the construction contract for
159 such work. The department may not participate in any utility
160 work costs that occur as a result of changes or additions during
161 the course of the contract.

162 (c) When an agreement between the department and utility is
163 executed for utility work to be accomplished in advance of a
164 contract for construction of a transportation facility, the
165 department may participate in the cost of clearing and grubbing
166 necessary to perform such work.

167 (d) If the utility facility was initially installed to
168 exclusively serve the authority or its tenants, or both, the
169 authority shall bear the costs of the utility work. However, the
170 authority is not responsible for the cost of utility work
171 related to any subsequent additions to that facility for the
172 purpose of serving others. For a county or municipality, if such
173 utility facility was installed in the right-of-way as a means to
174 serve a county or municipal facility on a parcel of property
175 adjacent to the right-of-way and if the intended use of the
176 county or municipal facility is for a use other than
177 transportation purposes, the obligation of the county or
178 municipality to bear the costs of the utility work shall extend
179 only to utility work on the parcel of property on which the
180 facility of the county or municipality originally served by the
181 utility facility is located.

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



885778

185 the authority for the purpose of accommodating the acquisition
186 or use of the right-of-way by the authority, without the
187 agreement expressly addressing future responsibility for the
188 cost of necessary utility work, the authority shall bear the
189 cost of removal or relocation. This paragraph does not impair or
190 restrict, and may not be used to interpret, the terms of any
191 such agreement entered into before July 1, 2009.

192 (f) If the utility is an electric facility being relocated
193 underground in order to enhance vehicular, bicycle, and
194 pedestrian safety and in which ownership of the electric
195 facility to be placed underground has been transferred from a
196 private to a public utility within the past 5 years, the
197 department shall incur all costs of the necessary utility work.

198 (g) An authority may bear the costs of utility work
199 required to eliminate an unreasonable interference when the
200 utility is not able to establish that it has a compensable
201 property right in the particular property where the utility is
202 located if:

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

205 2. The utility demonstrates that it has a compensable
206 property right in adjacent properties along the alignment of the
207 utility or, after due diligence, certifies that the utility does
208 not have evidence to prove or disprove that it has a compensable
209 property right in the particular property where the utility is
210 located; and

211 3. The information available to the authority does not
212 establish the relative priorities of the authority's and the
213 utility's interests in the particular property.



885778

214 (h) If a municipally owned utility or county-owned utility
215 is located in a rural area of critical economic concern, as
216 defined in s. 288.0656(2), and the department determines that
217 the utility is unable, and will not be able within the next 10
218 years, to pay for the cost of utility work necessitated by a
219 department project on the State Highway System, the department
220 may pay, in whole or in part, the cost of such utility work
221 performed by the department or its contractor.

222 (i) If the relocation of utility facilities is necessitated
223 by the construction of a commuter rail service project or an
224 intercity passenger rail service project and the cost of the
225 project is eligible and approved for reimbursement by the
226 Federal Government, then in that event the utility owning or
227 operating such facilities located by permit on a department-
228 owned rail corridor shall perform any necessary utility
229 relocation work upon notice from the department, and the
230 department shall pay the expense properly attributable to such
231 utility relocation work in the same proportion as federal funds
232 are expended on the commuter rail service project or an
233 intercity passenger rail service project after deducting
234 therefrom any increase in the value of a new facility and any
235 salvage value derived from an old facility. In no event shall
236 the state be required to use state dollars for such utility
237 relocation work. This paragraph does not apply to any phase of
238 the Central Florida Commuter Rail project, known as SunRail.

239 (j) If a utility is located within an existing and valid
240 utility easement granted by recorded plat, regardless of whether
241 such land was subsequently acquired by the authority by
242 dedication, transfer of fee, or otherwise, the authority shall



885778

243 bear the cost of the utility work required to eliminate an
244 unreasonable interference.

245 Section 4. The Legislature finds that a proper and
246 legitimate state purpose is served by clarifying a utility's
247 responsibility for relocating its facilities within the right-
248 of-way or within a utility easement granted by recorded plat.
249 Therefore, the Legislature determines and declares that this act
250 fulfills an important state interest.

251 Section 5. This act shall take effect upon becoming a law.
252

253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255 Delete everything before the enacting clause
256 and insert:

257 A bill to be entitled
258 An act relating to the location of utilities; amending
259 s. 125.42, F.S.; authorizing the board of county
260 commissioners to grant a license to work on or operate
261 communications services within the right-of-way limits
262 of certain county or public highways or roads;
263 conforming a cross-reference; amending s. 337.401,
264 F.S.; authorizing the Department of Transportation and
265 certain local governmental entities to prescribe and
266 enforce rules or regulations regarding placing and
267 maintaining specified structures within the right-of-
268 way limits of roads or publicly owned rail corridors
269 under their respective jurisdictions; prohibiting a
270 municipality or county from requiring a utility to
271 provide proprietary maps of facilities under certain



885778

272 circumstances; prohibiting a municipality or county
273 from requiring a provider of communications services
274 to provide proprietary maps of facilities under
275 certain circumstances; amending s. 337.403, F.S.;
276 requiring a utility owner, under certain
277 circumstances, to initiate at its own expense the work
278 necessary to alleviate an interference to a public
279 road or publicly owned rail corridor which is caused
280 by a utility if it is placed within the right-of-way
281 limits of the public road or publicly owned rail
282 corridor; requiring an authority or an entity other
283 than the authority to bear the costs of relocating a
284 utility in certain circumstances; requiring the
285 authority to bear the cost of the utility work
286 necessary to eliminate an unreasonable interference if
287 the utility is located within a certain utility
288 easement; conforming a cross-reference; providing
289 legislative findings; providing an effective date.
290