



505366

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
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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



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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) ~~s. 337.403(1)(d)-(i)~~.

54 Section 2. Paragraph (a) of subsection (1) of section
55 337.401, Florida Statutes, is 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;



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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 as the "utility." The department may enter into a
72 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 Section 3. Subsection (1) of section 337.403, Florida
79 Statutes, is amended to read:

80 337.403 Interference caused by utility; expenses.—

81 (1) If a utility that is placed upon, under, over, or
82 within the right-of-way limits of ~~along~~ any public road or
83 publicly owned rail corridor is found by the authority to be
84 unreasonably interfering in any way with the convenient, safe,
85 or continuous use, or the maintenance, improvement, extension,
86 or expansion, of such public road or publicly owned rail
87 corridor, the utility owner shall, upon 30 days' written notice
88 to the utility or its agent by the authority, initiate the work
89 necessary to alleviate the interference at its own expense
90 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
91 be completed within such reasonable time as stated in the notice
92 or such time as agreed to by the authority and the utility
93 owner.

94 (a) If the relocation of utility facilities, as referred to
95 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
96 84-627, is necessitated by the construction of a project on the
97 federal-aid interstate system, including extensions thereof



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98 within urban areas, and the cost of the project is eligible and
99 approved for reimbursement by the Federal Government to the
100 extent of 90 percent or more under the Federal Aid Highway Act,
101 or any amendment thereof, then in that event the utility owning
102 or operating such facilities shall perform any necessary work
103 upon notice from the department, and the state shall pay the
104 entire expense properly attributable to such work after
105 deducting therefrom any increase in the value of a new facility
106 and any salvage value derived from an old facility.

107 (b) When a joint agreement between the department and the
108 utility is executed for utility work to be accomplished as part
109 of a contract for construction of a transportation facility, the
110 department may participate in those utility work costs that
111 exceed the department's official estimate of the cost of the
112 work by more than 10 percent. The amount of such participation
113 is limited to the difference between the official estimate of
114 all the work in the joint agreement plus 10 percent and the
115 amount awarded for this work in the construction contract for
116 such work. The department may not participate in any utility
117 work costs that occur as a result of changes or additions during
118 the course of the contract.

119 (c) When an agreement between the department and utility is
120 executed for utility work to be accomplished in advance of a
121 contract for construction of a transportation facility, the
122 department may participate in the cost of clearing and grubbing
123 necessary to perform such work.

124 (d) If the utility facility was initially installed to
125 exclusively serve the authority or its tenants, or both, the
126 authority shall bear the costs of the utility work. However, the



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127 authority is not responsible for the cost of utility work
128 related to any subsequent additions to that facility for the
129 purpose of serving others. For a county or municipality, if such
130 utility facility was installed in the right-of-way as a means to
131 serve a county or municipal facility on a parcel of property
132 adjacent to the right-of-way and if the intended use of the
133 county or municipal facility is for a use other than
134 transportation purposes, the obligation of the county or
135 municipality to bear the costs of the utility work shall extend
136 only to utility work on the parcel of property on which the
137 facility of the county or municipality originally served by the
138 utility facility is located.

139 (e) If, under an agreement between a utility and the
140 authority entered into after July 1, 2009, the utility conveys,
141 subordinates, or relinquishes a compensable property right to
142 the authority for the purpose of accommodating the acquisition
143 or use of the right-of-way by the authority, without the
144 agreement expressly addressing future responsibility for the
145 cost of necessary utility work, the authority shall bear the
146 cost of removal or relocation. This paragraph does not impair or
147 restrict, and may not be used to interpret, the terms of any
148 such agreement entered into before July 1, 2009.

149 (f) If the utility is an electric facility being relocated
150 underground in order to enhance vehicular, bicycle, and
151 pedestrian safety and in which ownership of the electric
152 facility to be placed underground has been transferred from a
153 private to a public utility within the past 5 years, the
154 department shall incur all costs of the necessary utility work.

155 (g) An authority may bear the costs of utility work



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156 required to eliminate an unreasonable interference when the
157 utility is not able to establish that it has a compensable
158 property right in the particular property where the utility is
159 located if:

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

162 2. The utility demonstrates that it has a compensable
163 property right in adjacent properties along the alignment of the
164 utility or, after due diligence, certifies that the utility does
165 not have evidence to prove or disprove that it has a compensable
166 property right in the particular property where the utility is
167 located; and

168 3. The information available to the authority does not
169 establish the relative priorities of the authority's and the
170 utility's interests in the particular property.

171 (h) If a municipally owned utility or county-owned utility
172 is located in a rural area of opportunity, as defined in s.
173 288.0656(2), and the department determines that the utility is
174 unable, and will not be able within the next 10 years, to pay
175 for the cost of utility work necessitated by a department
176 project on the State Highway System, the department may pay, in
177 whole or in part, the cost of such utility work performed by the
178 department or its contractor.

179 (i) If the relocation of utility facilities is necessitated
180 by the construction of a commuter rail service project or an
181 intercity passenger rail service project and the cost of the
182 project is eligible and approved for reimbursement by the
183 Federal Government, then in that event the utility owning or
184 operating such facilities located by permit on a department-



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185 owned rail corridor shall perform any necessary utility
186 relocation work upon notice from the department, and the
187 department shall pay the expense properly attributable to such
188 utility relocation work in the same proportion as federal funds
189 are expended on the commuter rail service project or an
190 intercity passenger rail service project after deducting
191 therefrom any increase in the value of a new facility and any
192 salvage value derived from an old facility. In no event shall
193 the state be required to use state dollars for such utility
194 relocation work. This paragraph does not apply to any phase of
195 the Central Florida Commuter Rail project, known as SunRail.

196 (j) If a utility is lawfully located within an existing and
197 valid utility easement granted by recorded plat, regardless of
198 whether such land was subsequently acquired by the authority by
199 dedication, transfer of fee, or otherwise, the authority must
200 bear the cost of the utility work required to eliminate an
201 unreasonable interference. The authority shall pay the entire
202 expense properly attributable to such work after deducting any
203 increase in the value of a new facility and any salvage value
204 derived from an old facility.

205 Section 4. The Legislature finds that a proper and
206 legitimate state purpose is served by clarifying a utility's
207 responsibility for relocating its facilities within a utility
208 easement granted by recorded plat. Therefore, the Legislature
209 determines and declares that this act fulfills an important
210 state interest.

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

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



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214 And the title is amended as follows:

215 Delete everything before the enacting clause
216 and insert:

217 A bill to be entitled

218 An act relating to the location of utilities; amending
219 s. 125.42, F.S.; revising the circumstances under
220 which a board of county commissioners is authorized to
221 grant to a person or private corporation a license for
222 specified projects related to lines for the
223 transmission of certain public utilities and
224 communication services; conforming a cross-reference;
225 amending s. 337.401, F.S.; authorizing the Department
226 of Transportation and certain local governmental
227 entities to prescribe and enforce rules or regulations
228 regarding the placement and maintenance of specified
229 structures and lines within the right-of-way limits of
230 roads or publicly owned rail corridors under their
231 respective jurisdictions; conforming cross-references;
232 amending s. 337.403, F.S.; specifying that the owner
233 of a utility located within certain right-of-way
234 limits must initiate and bear the cost necessary to
235 alleviate any interference to the use of certain
236 public roads or rail corridors under certain
237 circumstances; conforming a cross-reference; requiring
238 the authority to bear the cost of the utility work
239 necessary to eliminate an unreasonable interference if
240 the utility is lawfully located within a certain
241 utility easement, subject to certain deductions;
242 providing findings of an important state interest;



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providing an effective date.