

By Senator Flores

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1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; revising the circumstances under
4 which a board of county commissioners is authorized to
5 grant to a person or private corporation a license for
6 specified projects related to lines for the
7 transmission of certain public utilities and
8 communication services; conforming a cross-reference;
9 amending s. 337.401, F.S.; authorizing the Department
10 of Transportation and certain local governmental
11 entities to prescribe and enforce rules or regulations
12 regarding the placement and maintenance of specified
13 structures and lines within the right-of-way limits of
14 roads or publicly owned rail corridors under their
15 respective jurisdictions; prohibiting a municipality
16 or county from requiring a utility or a provider of
17 communications services to provide proprietary maps of
18 previously permitted facilities; amending s. 337.403,
19 F.S.; specifying that a utility located within certain
20 right-of-way limits must initiate and bear the cost
21 necessary to alleviate any interference to the use of
22 certain public roads or rail corridors under certain
23 circumstances; conforming a cross-reference; requiring
24 an authority or an entity other than the authority to
25 bear the cost of relocating a utility under certain
26 circumstances; providing applicability; requiring the
27 authority under certain circumstances to pay the
28 entire expense attributable to relocating a utility
29 after certain deductions; requiring the authority to

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30 bear the cost of the utility work necessary to
31 eliminate an unreasonable interference if the utility
32 is lawfully located within a certain utility easement;
33 providing findings of an important state interest;
34 providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

87 Section 2. Paragraph (a) of subsection (1), subsection (2),

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88 and paragraph (b) of subsection (3) of section 337.401, Florida
89 Statutes, are amended to read:

90 337.401 Use of right-of-way for utilities subject to
91 regulation; permit; fees.—

92 (1) (a) The department and local governmental entities,
93 referred to in this section and in ss. 337.402, 337.403, and
94 337.404 ~~ss. 337.401-337.404~~ as the "authority," which ~~that~~ have
95 jurisdiction and control of public roads or publicly owned rail
96 corridors are authorized to prescribe and enforce reasonable
97 rules or regulations with reference to the placing and
98 maintaining ~~along,~~ across, or on, or within the right-of-way
99 limits of any road or publicly owned rail corridors under their
100 respective jurisdictions any electric transmission, telephone,
101 telegraph, or other communications services lines; pole lines;
102 poles; railways; ditches; sewers; water, heat, or gas mains;
103 pipelines; fences; gasoline tanks and pumps; or other structures
104 referred to in this section and in ss. 337.402, 337.403, and
105 337.404 ~~this section~~ as the "utility." The department may enter
106 into a permit-delegation agreement with a governmental entity if
107 issuance of a permit is based on requirements that the
108 department finds will ensure the safety and integrity of
109 facilities of the Department of Transportation; however, the
110 permit-delegation agreement does not apply to facilities of
111 electric utilities as defined in s. 366.02(2).

112 (2) The authority may grant to any person who is a resident
113 of this state, or to any corporation which is organized under
114 the laws of this state or licensed to do business within this
115 state, the use of a right-of-way for the utility in accordance
116 with such rules or regulations as the authority may adopt. No

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117 utility shall be installed, located, or relocated unless
118 authorized by a written permit issued by the authority. However,
119 for public roads or publicly owned rail corridors under the
120 jurisdiction of the department, a utility relocation schedule
121 and relocation agreement may be executed in lieu of a written
122 permit. The permit shall require the permit holder to be
123 responsible for any damage resulting from the issuance of such
124 permit. In exercising its authority over a utility under this
125 section, a municipality or county may not require a utility to
126 provide proprietary maps of facilities that were previously
127 subject to a permit from the authority. The authority may
128 initiate injunctive proceedings as provided in s. 120.69 to
129 enforce provisions of this subsection or any rule or order
130 issued or entered into pursuant thereto.

131 (3)

132 (b) Registration described in paragraph (a) does not
133 establish a right to place or maintain, or priority for the
134 placement or maintenance of, a communications facility in roads
135 or rights-of-way of a municipality or county. Each municipality
136 and county retains the authority to regulate and manage
137 municipal and county roads or rights-of-way in exercising its
138 police power. Any rules or regulations adopted by a municipality
139 or county which govern the occupation of its roads or rights-of-
140 way by providers of communications services must be related to
141 the placement or maintenance of facilities in such roads or
142 rights-of-way, must be reasonable and nondiscriminatory, and may
143 include only those matters necessary to manage the roads or
144 rights-of-way of the municipality or county. In exercising its
145 authority over providers of communications services under this

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146 section, a municipality or county may not require a provider of
147 communications services to provide proprietary maps of
148 facilities that were previously subject to a permit from the
149 authority.

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

152 337.403 Interference caused by utility; expenses.—

153 (1) If a utility that is placed upon, under, over, or
154 within the right-of-way limits of ~~along~~ any public road or
155 publicly owned rail corridor is found by the authority to be
156 unreasonably interfering in any way with the convenient, safe,
157 or continuous use, or the maintenance, improvement, extension,
158 or expansion, of such public road or publicly owned rail
159 corridor, the utility owner shall, upon 30 days' written notice
160 to the utility or its agent by the authority, initiate the work
161 necessary to alleviate the interference at its own expense
162 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must
163 be completed within such reasonable time as stated in the notice
164 or such time as agreed to by the authority and the utility
165 owner. If the authority requires the relocation of a utility for
166 purposes not described in this subsection and the utility owner
167 is authorized by state or common law or state or local agreement
168 to place facilities in the public rights-of-way, the authority
169 must bear the cost of relocating the utility. If relocation is
170 required as a condition or result of a project by an entity
171 other than an authority, the entity other than the authority
172 must bear the cost of relocating the utility except to the
173 extent that the relocation would otherwise be required in
174 connection with a transportation improvement identified in the

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175 authority's capital improvement schedule and scheduled for
176 construction within 5 years. This subsection does not impair any
177 right of the holder of a private railroad right-of-way or
178 obligate the holder of such private railroad right-of-way to
179 bear the relocation cost in such railroad right-of-way, subject
180 to any agreement between the holder of the private railroad
181 right-of-way and a utility that otherwise allocates such
182 relocation cost. This subsection also does not affect a lawful
183 permit or contract entered into between an authority and a
184 utility before October 1, 2015. To the extent that an authority
185 is required by this subsection to bear the cost of relocating a
186 utility, the authority shall pay the entire expense properly
187 attributable to such work after deducting any increase in the
188 value of a new facility and any salvage value derived from an
189 old facility.

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

203 (b) When a joint agreement between the department and the

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204 utility is executed for utility work to be accomplished as part
205 of a contract for construction of a transportation facility, the
206 department may participate in those utility work costs that
207 exceed the department's official estimate of the cost of the
208 work by more than 10 percent. The amount of such participation
209 is limited to the difference between the official estimate of
210 all the work in the joint agreement plus 10 percent and the
211 amount awarded for this work in the construction contract for
212 such work. The department may not participate in any utility
213 work costs that occur as a result of changes or additions during
214 the course of the contract.

215 (c) When an agreement between the department and utility is
216 executed for utility work to be accomplished in advance of a
217 contract for construction of a transportation facility, the
218 department may participate in the cost of clearing and grubbing
219 necessary to perform such work.

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

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233 facility of the county or municipality originally served by the
234 utility facility is located.

235 (e) If, under an agreement between a utility and the
236 authority entered into after July 1, 2009, the utility conveys,
237 subordinates, or relinquishes a compensable property right to
238 the authority for the purpose of accommodating the acquisition
239 or use of the right-of-way by the authority, without the
240 agreement expressly addressing future responsibility for the
241 cost of necessary utility work, the authority shall bear the
242 cost of removal or relocation. This paragraph does not impair or
243 restrict, and may not be used to interpret, the terms of any
244 such agreement entered into before July 1, 2009.

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

251 (g) An authority may bear the costs of utility work
252 required to eliminate an unreasonable interference when the
253 utility is not able to establish that it has a compensable
254 property right in the particular property where the utility is
255 located if:

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

258 2. The utility demonstrates that it has a compensable
259 property right in adjacent properties along the alignment of the
260 utility or, after due diligence, certifies that the utility does
261 not have evidence to prove or disprove that it has a compensable

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262 property right in the particular property where the utility is
263 located; and

264 3. The information available to the authority does not
265 establish the relative priorities of the authority's and the
266 utility's interests in the particular property.

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

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

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291 the Central Florida Commuter Rail project, known as SunRail.

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

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

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