HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #: HB 461

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Ingram; Campbell

109 **Y's** 4 **N's**

COMPANION BILLS: CS/SB 416

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 461 passed the House on February 24, 2016, as CS/SB 416. The bill provides an additional exemption to the general rule requiring utilities to bear the cost for relocating their facilities.

Consistent with common law, Florida Statutes provides for a utility to bear the costs of relocating its facilities located "upon, under, over, or along" any public road or rail corridor if the facilities "unreasonably interfere in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion" of the road or rail corridor. There are nine exceptions to this general rule enumerated by statute.

The bill creates a new exemption by requiring the Department of Transportation (DOT) or the local government entity to pay for the relocation of utility facilities if the facilities are located within an existing and valid public utility easement granted by recorded plat. This exception would still apply if ownership of the underlying land was acquired by the governmental entity requiring the relocation. Under this exception, the governmental entity would be required to pay the full cost of relocation, after deductions for any increase in value attributable to the new facility and any salvage value of the old facility.

The bill limits the authority of the county to grant licenses for utility facilities to only those facilities located "under, on, over, across, or within the right-of-way limits of," but not "along," a county highway or public road or highway.

The bill limits the authority of DOT and local government entities to prescribe and enforce reasonable rules and regulations relating the placement or maintenance of utility facilities to those located "under, on, over, across, or within the right-of-way limits of," but not "along," a county highway or public road or highway.

The bill may have an indeterminate negative fiscal impact on state and local government expenditures, to the extent these entities engage in road and rail projects requiring utility relocations.

The bill was approved by the Governor on March 10, 2016, ch. 2016-44, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public roads, highways, and rail corridors, as well as water, sewer, gas, power, telephone, television, and other utilities, play an essential role in our daily lives. Originally, the streets throughout our country were "laid out for the horse and buggy age" and, with time, they became "too narrow for the present traffic conditions."[1] Over time, streets were expanded to accommodate traffic and, even today, streets require expansion to accommodate evolving traffic needs. Rather than acquiring separate easements from private landowners, government authorities historically have allowed utilities to lay their lines and facilities within public rights-of-way and utility easements. Under current law regarding the platting of real property,[2] every plat offered for recording must include a dedication by all owners of record of the land to be subdivided.[3] Once a plat is recorded in compliance with the statute, all streets, rights-of-way, alleys, easements, and public areas shown on the plat are deemed dedicated for public use, for the uses and purposes thereon stated, unless otherwise stated.[4]

Historically, utilities have been required to pay to relocate lines or facilities located within property held for the public's benefit when relocation is required for a public project. For example, in 1905 the U.S. Supreme Court held that a gas utility company, which had an agreement providing it would make reasonable changes when directed by the City of New Orleans, was not entitled to be compensated for relocating certain lines located within streets and alleys in order for the city to develop a drainage system.[5] Similarly, in 1906 the Florida Supreme Court explained that it is a "rule well settled in the law [that with any] grant to individuals and corporations [of] the privilege of occupying the streets and public ways for lawful purposes, such as railroad tracks, poles, wires, and gas and water pipes, such rights are at all times held in subordination to the superior rights of the public, and all necessary and desirable police ordinances, that are reasonable, may be enacted and enforced to protect the public health, safety, and convenience, notwithstanding the same may interfere with legal franchise rights."[6]

Accordingly, in 1935, the U.S. Supreme Court held that a utility, which had purchased a right-of-way for pipes and auxiliary telephone lines, had purchased a private right-of-way, or private easement, which the court held was land subject to compensation by the authority seeking to build a highway across it.[7] In 1983, the U.S. Supreme Court reaffirmed the common-law principle that a utility forced to relocate from a public right-of-way must do so at its own expense.[8]

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[1] *Ridgefield Land Co. v. City of Detroit*, 217 N.W. 58, 59 (Mich. 1928).

[2] Current law provides that every plat submitted to the approving agency of a local governing body must be accompanied by a boundary survey of the platted lands, as well as a title opinion of an attorney-at-law licensed in Florida or a certification by an abstractor or a title company, as specified by statute. Section 177.041, F.S. Prior to approval by the appropriate governing body, the plat must be reviewed for conformity to the governing statutes by a professional surveyor and mapper either employed by or under contract to the local governing body, the costs of which must be borne by the legal entity offering the plat for recordation, and evidence of such review must be placed on such plat. Section 177.081(1), F.S.

[3] Section 177.081(3), F.S. As used in chapter 177, F.S., "'[e]asement' means any strip of land created by a subdivider for public or private utilities, drainage, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in the reservation of the servitude." Section 177.031(7)(a), F.S. "'Right-of-way' means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies." Section 177.031(16), F.S.

[4] *Id.*

[5] *New Orleans Gaslight Co. v. Drainage Comm'n of New Orleans*, 197 U.S. 453, 454 (1905).

[6] *Anderson v. Fuller*, 41 So. 684, 688 (Fla. 1906).

[7] *Panhandle Eastern Pipe Line Co. v. State Highway Comm'n of Kansas*, 294 U.S. 613 (1935). *See City of Grand Prairie v. Am. Tel & Tel. Co.*, 405 F.2d 1144,1146 (5th Cir. 1969) (holding the common law rule that a utility pay for relocation did not apply where the utility facilities were located within a private easement acquired long prior to planning and laying out and construction of a street). *See Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (the Eleventh Circuit Court of Appeals has adopted all of the decisions of the former Fifth Circuit decided prior to October 1, 1981).

[8] *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tele. Co. of Va.*, 464 U.S. 30, 35 (1983).

In 2014, the Florida Second District Court of Appeal (Second DCA) ruled that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law[9] and, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, this common law principle governs.[10] This case involved a platted public utility easement, six feet or less on each side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment.[11] The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility's equipment if the municipality required the utility to do so. The Second DCA held that the utility would bear the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality's expansion of an existing road.[12]

Utility Use of Public Lands

Various provisions of Florida law establish the authority of utilities to place their facilities on or beside public property. Chapter 361, F.S., establishes eminent domain rights over public and private property for companies that construct, maintain, or operate public works, such as water, sewer, wastewater reuse, natural gas, and electric utilities.[13] Through eminent domain, a utility acquires the property at issue.

Other provisions of law establish the authority of telecommunications companies to place their facilities along public roads or in the public right-of-way without acquiring the property. For example, s. 362.01, F.S., authorizes any telegraph or telephone company to "erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway" provided that this does not "obstruct or interfere with the common uses of said roads and highways." Permission to occupy the streets of an incorporated city or town must be obtained by the city or town council. In addition, s. 610.104, F.S., provides that a cable or video service provider granted a statewide franchise is authorized to "construct, maintain, and operate facilities through, upon, over, and under any public right-of-way … subject to the applicable governmental permitting."

Statutory Responsibility for Cost of Removal or Relocation of Utility Facilities

[9] *Lee County Electric Coop., Inc. v. City of Cape Coral*, 159 So. 3d 126, 130 (Fla. 2d DCA 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).
[10] *Id*. at 130-31.
[11] "A right-of-way is not the same thing as an easement. The term 'right-of-way' has been construed to mean ... a right of passage over the land of another.... It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement." *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991) (citation & internal quotation marks omitted). An easement gives someone else a reserved right to use property in a specified manner. *See Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) ("[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights."). An easement "does not involve title to or an estate in the land itself." *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).
[12] *Lee County Electric Coop., Inc.*, supra n. 9. In reaching this conclusion, the Second DCA distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned "a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property." *Lee County Electric Coop., Inc.*, 159 So. 3d at 129. The Second DCA in its opinion also distinguished an earlier Second DCA case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, the court determined that the county had to pay for "attempt[ing] to eliminate General Telephone's franchise and forc[ing] it to relocate its facilities." The court stated that the ruling in *Pinellas County* could not be dispositive in *Lee County* since it was both unclear whether the payment ordered by the court was for the termination of the franchise agreement or the cost of relocating utility lines, and that the court in *Pinellas County* used language suggesting the franchise agreement may have had the City of St. Petersburg to pay for the cost of relocation.
[13] *See also* s. 362.02, F.S. (telegraph and telephone companies are granted eminent domain powers to construct, maintain, and operate their lines along and upon the railroad right-of-way, provided that it does not interfere with the ordinary use of the railroad).

Since 1957, Florida law expressly has provided that in the event of widening, repair, or reconstruction of a county's public road or highway,[14] the licensee must move or remove the lines at no cost to the county.[15] In 2009, that requirement was made subject to s. 337.403(1)(e), F.S.[16] In 2014, it was made subject to an additional requirement that the county find the utility is "unreasonably interfering" with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.[17]

Additionally, beginning in 1957, Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road[18] that an authority[19] finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of the road.[20] In 1994, that law was amended to include utilities placed upon, under, over, or along any publicly owned rail corridor.[21] Current law requires utility owners, upon 30 days' notice, to eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.[22] However, since 1987, numerous exceptions to the general rule that the utility bear the costs under these circumstances have been statutorily carved out.[23] These exceptions include:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.[24]
- When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.[25]
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.[26]
- If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.[27]
- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.[28]
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been

[14] In this context, "road" means "a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith." Section 334.03(22), F.S.
[15] Chapter 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.
[16] Chapter 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S. Section 337.403(1)(e), F.S. requires the authority to pay for relocation costs if the utility, in an agreement entered into after July 1, 2009, conveyed, subordinated, or relinquished a property right to the authority for the purpose of accommodating the use or acquisition of a right-of-way.
[17] Chapter 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.
[18] See definition of "road" in n. 14.
[19] "[A]uthority" means DOT and local governmental entities. s. 337.401(1), F.S.
[20] Chapter 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.
[21] Chapter 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.
[22] Section 337.403, F.S.
[23] Section 337.403(1)(a)-(i), F.S.
[24] Chapter 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.
[25] Chapter 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.
[26] Chapter 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.
[27] Chapter 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.
[28] Chapter 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.

transferred from a private to a public utility within the past five years, DOT bears the cost of the necessary utility work.[29]

- An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
    - If the utility was physically located on the particular property before the authority acquired rights in the property,[30]
    - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property,[31] and
    - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility[32] or, pursuant to a 2014 amendment, after due diligence, the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.[33]
- If a municipally-owned or county-owned utility is located in a rural area of critical economic concern[34] and DOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.
- If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the Federal Government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as Federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.[35]

Also, in 2014, the Legislature clarified the 2009 exception that requires an authority to bear the costs to relocate a utility facility that was initially installed to exclusively serve the authority or its tenants. Under this clarification, if the utility facility was installed in the right-of-way to serve a county or municipal facility on property adjacent to the right-of-way and the county or municipal facility is intended to be used for purposes other than transportation purposes, the county or municipality is obligated to pay only for the utility work done outside the right-of-way.[36]

Florida statutory law is silent as to cost responsibility for relocation of utility facilities located on or along public roads or rights-of-way in circumstances other than those identified above. The U.S. Supreme Court, in reaffirming the common-law principle related to cost responsibility for utility relocation, has noted that "[i]t is a well-established principle of statutory construction that '[t]he common law ... ought not to be deemed repealed, unless the language of a statute be clear and explicit for this purpose.'"[37] Thus, in circumstances not explicitly addressed in Florida statutory law, the courts may apply the common law principle requiring a utility to pay for relocation of its facilities as required by a governmental authority, absent an agreement otherwise or the presence of a private utility easement.

Specific Grant of Authority to Counties to Issue Licenses to Utilities

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[29] Chapter 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.
[30] Chapter 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g)1., F.S.
[31] Chapter 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g)3., F.S.
[32] Chapter 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.
[33] Chapter 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.
[34] Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."
[35] Chapter 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. Section 337.403(1)(i), F.S.
[36] Chapter 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(d), F.S.
[37] *Norfolk Redevelopment & Hous. Auth.*, 464 U.S. at, 35 (1983), quoting *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603, 623, 3 L. Ed. 453 (1812).

Section 125.42, F.S., gives counties the specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other utility, and television transmission lines located under, on, over, across and *along* any county roads or highways.[38] The "under, on, over, across and along" county roads or highway language has been in the statute since 1947.[39]

In *Lee County Electric Cooperative, Inc. v. City of Cape Coral*, the court interpreted the term "along," as used in s. 337.403, F.S., in determining who would bear the burden of the cost of moving a utility line.[40] The interpretation of "along" informs its similar use in ss. 125.42 and 337.401, F.S.[41] The court determined that s. 337.403, F.S., codified common law and, applying the statute, the utility was responsible for bearing the costs of relocation.[42] The court did not find any "cases interpreting the 'along' the road portion of the statute," but determined the statutory language was clear, holding that "[t]he utility lines at issue . . . were located 'along' the road and they were 'interfering' with the City's 'expansion' of the road."[43]

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Facilities

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property.[44] In relation to the placement and maintenance of utility facilities along, across, or on any public road or publicly owned rail corridor, current law authorizes the DOT and local governmental entities[45] to prescribe and enforce reasonable rules or regulations.[46] "Utility" in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures the statute refers to as a "utility."[47] Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.[48]

Effect of Changes

The bill revises several statutory provisions related to the placement and relocation of utility facilities. In general, the bill changes references to utility facilities located *along* public roads and publicly owned rail corridors to utility facilities located *within the right-of-way limits of* such roads and rail corridors. These changes specify the circumstances under which a utility must pay to remove or relocate its facilities (s. 337.403, F.S.), limit the authority of a county to grant licenses for utility transmission lines (s. 125.42, F.S.), and limit the authority of DOT and local governmental entities to prescribe and enforce rules or regulations relating to the placement or maintenance of utility facilities (s. 337.401, F.S.).

Statutory Responsibility for Cost of Removal or Relocation of Utility Facilities

The bill limits a utility's responsibility to pay for the removal or relocation of its facilities that unreasonably interfere with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, a public road or publicly owned rail corridor to only those

[38] Section 125.42, F.S.
[39] Chapter 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.
[40] *Lee County Electric Coop., Inc. v. City of Cape Coral*, 159 So. 3d 126 (Fla. 2d DCA 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014).
[41] "When a court interprets a statute, it is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole [and], whenever possible, . . . give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Almerico v. RLI Ins.*, 716 So. 2d 774, 779, n.7 (Fla. 1998) (citations & internal quotation marks omitted).
[42] *Lee County Electric Coop., Inc., supra n. 45,* at Part II of the opinion.
[43] *Id.* at 132.
[44] Sections 337.015 - 337.409, F.S.
[45] These are referred in ss. 337.401-337.404, F.S., as an "authority." s. 337.401(1)(a), F.S.
[46] Section 337.401, F.S.,
[47] Section 337.401(1)(a), F.S.
[48] *See* City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.

facilities located *upon, under, over, or within the right-of-way limits of* the road or rail corridor, but not *along* the road or rail corridor. Thus, the bill draws a clearer distinction between utility facilities located within the right-of-way and those located outside the right-of-way but within a dedicated public utility easement.

This distinction is reinforced by the addition of an exception which requires DOT or the local government authority to pay for the relocation of facilities that unreasonably interfere with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, a public road or publicly owned rail corridor where the facilities are located within a utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise. To the extent an authority is required to bear the cost of relocating a utility, the bill provides that the authority shall pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

By eliminating the reference to facilities "along" a pubic road or publicly owned rail corridor and providing a specific exemption for the relocation of utilities located in a public utility easement, this provision removes the precedential effect of the *Lee County* case on facilities similarly located in public utility easements along a road or rail corridor but outside the right-of-way. Thus, the bill appears to shift cost responsibility in these instances to the governmental authority.

It is not clear how the provisions of the bill will impact utility relocation cost sharing as a practical matter. Utility representatives assert that local government authorities routinely pay to relocate utility facilities under current law. While local government representatives do not dispute this point, they assert these payments are made pursuant to negotiated agreements and for the purpose of efficiency in completing projects.

While the cost responsibility for many projects apparently is negotiated on a case-by-case basis, it is difficult to identify a clear and consistent prior practice upon which to determine the full, practical impact of this provision in the bill. However, to the extent these circumstances were previously resolved by negotiation between utility providers and local government entities, this bill could impact such negotiations. Responses to a survey by the Florida League of Cities suggest relocations from public utility easements are an uncommon occurrence, consistent with the position of utility representatives. Several municipalities reported one or fewer relocations from public utility easements in the recent past.[49] Two municipalities estimated the percentage of total city projects involving public utility easements, which was less than 5 percent in both cases.[50] A few municipalities, however, stated that relocations from public utility easements represented more than 20 percent of their projects.[51]

Specific Grant of Authority to Counties to Issue Licenses to Utilities

The bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other utility, television lines, and other communications services[52] is limited to those lines located *under, on, over, across, or within the right-of-way limits* of any county roads or highways.[53] Accordingly, this change removes a county's authority to grant licenses for such lines running *along* a road or highway, but not within the actual right of way, which may include a public utility easement.

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[49] Utility Relocation Information Request Survey, Florida League of Cities (conducted electronically July 14, 2015 to Sept. 14, 2015). *E.g*. City of Archer (none in last 5 years), City of Lake Wales (none in last 12 years), City of North Miami Beach (1 in last 16 years), City of Palm Bay (1 in last 8 years).

[50] *Id*. City of Clearwater ("5% of Clearwater's projects involve public utility easements"); City of Fort Walton Beach ("only 2% [of city projects] lie within a utility easement.")

[51] *Id*. City of South Daytona ("20% of our relocation projects [are] within a public easement"); City of Deerfield Beach ("2 [of 4] utility relocation projects [last year] … were located within a public utility easement[.]").

[52] The bill adds "other communications services" to the list of utilities in current law.

[53] Section 125.42(1), F.S.

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Facilities

The bill narrows the authority of DOT and local governmental entities to prescribe and enforce reasonable rules or regulations in relation to the placing and maintaining of electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to as a utility, to the placement or maintenance of such utilities *across, on, or within the right-of-way limits* of any public road or publicly owned rail corridors.[54] By changing the language to "right-of-way," the bill removes the authority of DOT and local governments to prescribe and enforce reasonable rules and regulations regarding the placement and maintenance of the foregoing utilities *along* a public road or rail corridor, which may include a public utility easement. The bill also changes the expression "other structures referred to as a utility" to include structures referred to in ss. 337.402-337.404, F.S.[55]

Finding of Important State Interest

The bill provides the following legislative finding:

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOT indicated the bill will have an indeterminate negative impact on state government expenditures to the extent the costs associated with moving utilities are no longer covered by the utility company.[56] The analysis also noted that the bill could result in adjustments to planned projects in the DOT Work Program, to the extent funds are expended on utility relocations.[57]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[54] Current law references placement and maintenance "along, across, or on" any road or publicly owned rail corridors, rather than the "right-of-way of" any road or publicly owned rail corridors. Section 337.401(1)(a), F.S.
[55] Current law includes only those other structures referred to in s. 337.401, F.S., as a "utility," which includes "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps." Section 337.401(1)(a), F.S.
[56] Florida Department of Transportation, Agency Analysis of 2016 House Bill 461 (dated November 3, 2015).
[57] *Id.*

Indeterminate. Several local government entities provided projections of increased costs that would result from the bill. These projections include:

- City of Cape Coral, three road projects, $4,131,492.[58]
- City of St. Petersburg Water Resources Department, sewer infrastructure, $106,556 per year.[59]
- City of Port St. Lucie, completion of Crosstown Parkway Extension Project, between $200,000 and $600,000.[60]
- City of North Port[61] City of South Daytona,[62] and the City of Edgewater[63] stated the bill would increase their expenditures, but did not provide a projected amount.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. By requiring DOT or local government entities to bear the cost of relocation for facilities located in public utility easements, the bill would appear to reduce costs for utilities. Representatives of the utility industry assert the bill conforms the statute to established practice prior to the Lee County decision, thus protecting them from costs previously borne by local governments. Local government representatives assert that costs previously were negotiated on a case-by-case basis. Staff has requested and reviewed information from both utility and local government representatives, but, based on these limited circumstances, can only identify a clear and consistent prior practice of the parties generally relying on negotiated agreements to resolve the payment for relocation of utility facilities from public utility easements.

D. FISCAL COMMENTS:

None.

[58] Florida League of Cities, *supra* note 49, City of Cape Coral response. It is not clear from response if these costs refer to a past or future project.
[59] Florida League of Cities, *supra* note 49, City of St. Petersburg response.
[60] Florida League of Cities, *supra* note 49, City of Port St. Lucie response.
[61] Florida League of Cities, *supra* note 49, City of North Port response.
[62] City of South Daytona Resolution No. 15-18.
[63] City of Edgewater Resolution No. 2015-R-34.