

By Senator Brandes

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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.; authorizing the board of county
4 commissioners to grant a license to work on or operate
5 specified utility and communications services lines
6 only within the right-of-way limits of certain county
7 or public highways or roads; conforming a cross-
8 reference; amending s. 337.401, F.S.; authorizing the
9 Department of Transportation and certain local
10 governmental entities to prescribe and enforce rules
11 or regulations regarding placing and maintaining
12 specified structures only within the right-of-way
13 limits of roads or publicly owned rail corridors under
14 their respective jurisdictions; prohibiting a
15 municipality or county from requiring a provider of
16 communications services to resubmit information
17 already in the possession of, or previously provided
18 to, the municipality or county; amending s. 337.403,
19 F.S.; requiring a utility owner, under certain
20 circumstances, to initiate at its own expense the work
21 necessary to alleviate an interference to a public
22 road or publicly owned rail corridor which is caused
23 by a utility if it is within the right-of-way limits
24 of the public road or publicly owned rail corridor;
25 requiring an authority or an entity other than the
26 authority to bear the costs of relocating a utility in
27 certain circumstances; requiring the authority to bear
28 the cost of the utility work necessary to eliminate an
29 unreasonable interference if the utility is located

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30 within a certain utility easement; conforming a cross-
31 reference; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 125.42, Florida Statutes, is amended to
36 read:

37 125.42 Water, sewage, gas, power, telephone, other utility,
38 and television lines within the right-of-way limits of along
39 county roads and highways.-

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

52 (a) To prevent the creation of any obstructions or
53 conditions which are or may become dangerous to the traveling
54 public;

55 (b) To require the licensee to repair any damage or injury
56 to the road or highway by reason of the exercise of the
57 privileges granted in any instrument creating such license and
58 to repair the road or highway promptly, restoring it to a

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59 condition at least equal to that which existed immediately prior
60 to the infliction of such damage or injury;

61 (c) Whereby the licensee shall hold the board of county
62 commissioners and members thereof harmless from the payment of
63 any compensation or damages resulting from the exercise of the
64 privileges granted in any instrument creating the license; and

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

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

71 (3) The board of county commissioners is authorized to
72 grant exclusive or nonexclusive licenses for the purposes stated
73 herein for television.

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

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

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

86 337.401 Use of right-of-way for utilities subject to
87 regulation; permit; fees.-

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88 (1) (a) The department and local governmental entities,
89 referred to in this section and in ss. 337.402, 337.403, and
90 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
91 jurisdiction and control of public roads or publicly owned rail
92 corridors are authorized to prescribe and enforce reasonable
93 rules or regulations with reference to the placing and
94 maintaining within the right-of-way limits of ~~along, across, or~~
95 ~~on~~ any road or publicly owned rail corridors under their
96 respective jurisdictions any electric transmission, telephone,
97 telegraph, or other communications services lines; pole lines;
98 poles; railways; ditches; sewers; water, heat, or gas mains;
99 pipelines; fences; gasoline tanks and pumps; or other structures
100 referred to in this section and in ss. 337.402, 337.403, and
101 337.404 ~~this section~~ as the "utility." The department may enter
102 into a permit-delegation agreement with a governmental entity if
103 issuance of a permit is based on requirements that the
104 department finds will ensure the safety and integrity of
105 facilities of the Department of Transportation; however, the
106 permit-delegation agreement does not apply to facilities of
107 electric utilities as defined in s. 366.02(2).

108 (3)

109 (b) Registration described in paragraph (a) does not
110 establish a right to place or maintain, or priority for the
111 placement or maintenance of, a communications facility in roads
112 or rights-of-way of a municipality or county. Each municipality
113 and county retains the authority to regulate and manage
114 municipal and county roads or rights-of-way in exercising its
115 police power. Any rules or regulations adopted by a municipality
116 or county which govern the occupation of its roads or rights-of-

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117 way by providers of communications services must be related to
118 the placement or maintenance of facilities in such roads or
119 rights-of-way, must be reasonable and nondiscriminatory, and may
120 include only those matters necessary to manage the roads or
121 rights-of-way of the municipality or county. In exercising its
122 authority over providers of communications services under this
123 section, a municipality or county may not require a provider of
124 communications services to resubmit information already in the
125 possession of the municipality or county or previously provided
126 to the municipality or county.

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

129 337.403 Interference caused by utility; expenses.—

130 (1) If a utility that is within the right-of-way limits of
131 ~~placed upon, under, over, or along~~ any public road or publicly
132 owned rail corridor is found by the authority to be unreasonably
133 interfering in any way with the convenient, safe, or continuous
134 use, or the maintenance, improvement, extension, or expansion,
135 of such public road or publicly owned rail corridor, the utility
136 owner shall, upon 30 days' written notice to the utility or its
137 agent by the authority, initiate the work necessary to alleviate
138 the interference at its own expense except as provided in
139 paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within
140 such reasonable time as stated in the notice or such time as
141 agreed to by the authority and the utility owner. If an
142 authority requires the relocation of a utility for purposes not
143 described in this subsection, the authority shall bear the cost
144 of relocating the utility. If the relocation is required as a
145 condition or result of a project by an entity other than an

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146 authority, then that entity shall bear the costs of relocating
147 the utility.

148 (a) If the relocation of utility facilities, as referred to
149 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
150 84-627, is necessitated by the construction of a project on the
151 federal-aid interstate system, including extensions thereof
152 within urban areas, and the cost of the project is eligible and
153 approved for reimbursement by the Federal Government to the
154 extent of 90 percent or more under the Federal Aid Highway Act,
155 or any amendment thereof, ~~then in that event~~ the utility owning
156 or operating such facilities shall perform any necessary work
157 upon notice from the department, and the state shall pay the
158 entire expense properly attributable to such work after
159 deducting therefrom any increase in the value of a new facility
160 and any salvage value derived from an old facility.

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

173 (c) When an agreement between the department and utility is
174 executed for utility work to be accomplished in advance of a

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175 contract for construction of a transportation facility, the
176 department may participate in the cost of clearing and grubbing
177 necessary to perform such work.

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

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

203 (f) If the utility is an electric facility being relocated

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204 underground in order to enhance vehicular, bicycle, and
205 pedestrian safety and in which ownership of the electric
206 facility to be placed underground has been transferred from a
207 private to a public utility within the past 5 years, the
208 department shall incur all costs of the necessary utility work.

209 (g) An authority may bear the costs of utility work
210 required to eliminate an unreasonable interference when the
211 utility is not able to establish that it has a compensable
212 property right in the particular property where the utility is
213 located if:

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

216 2. The utility demonstrates that it has a compensable
217 property right in adjacent properties along the alignment of the
218 utility or, after due diligence, certifies that the utility does
219 not have evidence to prove or disprove that it has a compensable
220 property right in the particular property where the utility is
221 located; and

222 3. The information available to the authority does not
223 establish the relative priorities of the authority's and the
224 utility's interests in the particular property.

225 (h) If a municipally owned utility or county-owned utility
226 is located in a rural area of critical economic concern, as
227 defined in s. 288.0656(2), and the department determines that
228 the utility is unable, and will not be able within the next 10
229 years, to pay for the cost of utility work necessitated by a
230 department project on the State Highway System, the department
231 may pay, in whole or in part, the cost of such utility work
232 performed by the department or its contractor.

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

250 (j) If a utility is located within an existing and valid
251 utility easement granted by recorded plat, regardless of whether
252 such land was subsequently acquired by the authority by
253 dedication, transfer of fee, or otherwise, the authority shall
254 bear the cost of the utility work required to eliminate an
255 unreasonable interference.

256 Section 4. This act shall take effect upon becoming a law.