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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Transportation (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 under, on, over,
17 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), subsection (2),
55 and paragraph (b) of subsection (3) of section 337.401, Florida
56 Statutes, are amended to read:

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

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



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69 poles; railways; ditches; sewers; water, heat, or gas mains;
70 pipelines; fences; gasoline tanks and pumps; or other structures
71 referred to in this section and in ss. 337.402, 337.403, and
72 337.404 ~~this section~~ as the "utility." The department may enter
73 into a permit-delegation agreement with a governmental entity if
74 issuance of a permit is based on requirements that the
75 department finds will ensure the safety and integrity of
76 facilities of the Department of Transportation; however, the
77 permit-delegation agreement does not apply to facilities of
78 electric utilities as defined in s. 366.02(2).

79 (2) The authority may grant to any person who is a resident
80 of this state, or to any corporation which is organized under
81 the laws of this state or licensed to do business within this
82 state, the use of a right-of-way for the utility in accordance
83 with such rules or regulations as the authority may adopt. No
84 utility shall be installed, located, or relocated unless
85 authorized by a written permit issued by the authority. However,
86 for public roads or publicly owned rail corridors under the
87 jurisdiction of the department, a utility relocation schedule
88 and relocation agreement may be executed in lieu of a written
89 permit. The permit shall require the permitholder to be
90 responsible for any damage resulting from the issuance of such
91 permit. In exercising its authority over a utility under this
92 section, a municipality or county may not require a utility to
93 provide proprietary maps of facilities where such facilities
94 have been previously subject to a permit from the authority. The
95 authority may initiate injunctive proceedings as provided in s.
96 120.69 to enforce provisions of this subsection or any rule or
97 order issued or entered into pursuant thereto.



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98 (3)

99 (b) Registration described in paragraph (a) does not
100 establish a right to place or maintain, or priority for the
101 placement or maintenance of, a communications facility in roads
102 or rights-of-way of a municipality or county. Each municipality
103 and county retains the authority to regulate and manage
104 municipal and county roads or rights-of-way in exercising its
105 police power. Any rules or regulations adopted by a municipality
106 or county which govern the occupation of its roads or rights-of-
107 way by providers of communications services must be related to
108 the placement or maintenance of facilities in such roads or
109 rights-of-way, must be reasonable and nondiscriminatory, and may
110 include only those matters necessary to manage the roads or
111 rights-of-way of the municipality or county. In exercising its
112 authority over providers of communications services under this
113 section, a municipality or county may not require a provider of
114 communications services to provide proprietary maps of
115 facilities where such facilities have been previously subject to
116 a permit from the authority.

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

119 337.403 Interference caused by utility; expenses.—

120 (1) If a utility that is placed upon, under, over, or
121 within the right-of-way limits of ~~along~~ any public road or
122 publicly owned rail corridor is found by the authority to be
123 unreasonably interfering in any way with the convenient, safe,
124 or continuous use, or the maintenance, improvement, extension,
125 or expansion, of such public road, including directly associated
126 drainage, or publicly owned rail corridor, the utility owner



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127 shall, upon 30 days' written notice to the utility or its agent
128 by the authority, initiate the work necessary to alleviate the
129 interference at its own expense except as provided in paragraphs
130 (a)-(j) ~~(a)-(i)~~. The work must be completed within such
131 reasonable time as stated in the notice or such time as agreed
132 to by the authority and the utility owner. If an authority
133 requires the relocation of a utility for purposes not described
134 in this subsection, the authority shall bear the cost of
135 relocating the utility. If the relocation is required as a
136 condition or result of a project by an entity other than an
137 authority, the entity other than the authority shall bear the
138 costs of relocating the utility. However, nothing in this
139 subsection shall impair any rights of the holder of any private
140 railroad right-of-way, including any rights in any agreement
141 between the holder of the private railroad right-of-way and a
142 utility that otherwise allocates such relocation cost.

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



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

168 (c) When an agreement between the department and utility is
169 executed for utility work to be accomplished in advance of a
170 contract for construction of a transportation facility, the
171 department may participate in the cost of clearing and grubbing
172 necessary to perform such work.

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



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185 only to utility work on the parcel of property on which the
186 facility of the county or municipality originally served by the
187 utility facility is located.

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

198 (f) If the utility is an electric facility being relocated
199 underground in order to enhance vehicular, bicycle, and
200 pedestrian safety and in which ownership of the electric
201 facility to be placed underground has been transferred from a
202 private to a public utility within the past 5 years, the
203 department shall incur all costs of the necessary utility work.

204 (g) An authority may bear the costs of utility work
205 required to eliminate an unreasonable interference when the
206 utility is not able to establish that it has a compensable
207 property right in the particular property where the utility is
208 located if:

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

211 2. The utility demonstrates that it has a compensable
212 property right in adjacent properties along the alignment of the
213 utility or, after due diligence, certifies that the utility does



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214 not have evidence to prove or disprove that it has a compensable
215 property right in the particular property where the utility is
216 located; and

217 3. The information available to the authority does not
218 establish the relative priorities of the authority's and the
219 utility's interests in the particular property.

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

228 (i) If the relocation of utility facilities is necessitated
229 by the construction of a commuter rail service project or an
230 intercity passenger rail service project and the cost of the
231 project is eligible and approved for reimbursement by the
232 Federal Government, then in that event the utility owning or
233 operating such facilities located by permit on a department-
234 owned rail corridor shall perform any necessary utility
235 relocation work upon notice from the department, and the
236 department shall pay the expense properly attributable to such
237 utility relocation work in the same proportion as federal funds
238 are expended on the commuter rail service project or an
239 intercity passenger rail service project after deducting
240 therefrom any increase in the value of a new facility and any
241 salvage value derived from an old facility. In no event shall
242 the state be required to use state dollars for such utility



243 relocation work. This paragraph does not apply to any phase of
244 the Central Florida Commuter Rail project, known as SunRail.

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

251 Section 4. The Legislature finds that a proper and
252 legitimate state purpose is served by clarifying a utility's
253 responsibility for relocating its facilities within the right-
254 of-way or within a utility easement granted by recorded plat.
255 Therefore, the Legislature determines and declares that this act
256 fulfills an important state interest.

257 Section 5. This act shall take effect upon becoming a law.
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260 ===== T I T L E A M E N D M E N T =====

261 And the title is amended as follows:

262 Delete everything before the enacting clause
263 and insert:

264 A bill to be entitled
265 An act relating to the location of utilities; amending
266 s. 125.42, F.S.; authorizing the board of county
267 commissioners to grant a license to work on or operate
268 specified communications services within the right-of-
269 way limits of certain county or public highways or
270 roads; conforming a cross-reference; amending s.
271 337.401, F.S.; authorizing the Department of



272 Transportation and certain local governmental entities
273 to prescribe and enforce rules or regulations
274 regarding placing and maintaining specified structures
275 within the right-of-way limits of roads or publicly
276 owned rail corridors under their respective
277 jurisdictions; prohibiting a municipality or county
278 from requiring a utility to provide proprietary maps
279 of facilities under certain circumstances; prohibiting
280 a municipality or county from requiring a provider of
281 communications services to provide proprietary maps of
282 facilities under certain circumstances; amending s.
283 337.403, F.S.; requiring a utility owner, under
284 certain circumstances, to initiate at its own expense
285 the work necessary to alleviate an interference to a
286 public road, including directly associated drainage,
287 or publicly owned rail corridor which is caused by the
288 utility if the utility is placed within the right-of-
289 way limits of the public road or publicly owned rail
290 corridor; conforming a cross-reference; requiring an
291 authority or an entity other than the authority to
292 bear the costs of relocating a utility in certain
293 circumstances; providing applicability; requiring the
294 authority to bear the cost of the utility work
295 necessary to eliminate an unreasonable interference if
296 the utility is lawfully located within a certain
297 utility easement; providing legislative findings;
298 providing an effective date.