

**By** the Committees on Transportation; and Community Affairs; and  
Senator Brandes

596-03453-15

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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 communications services within the right-of-  
6       way limits of certain county or public highways or  
7       roads; conforming a cross-reference; amending s.  
8       337.401, F.S.; authorizing the Department of  
9       Transportation and certain local governmental entities  
10      to prescribe and enforce rules or regulations  
11      regarding placing and maintaining specified structures  
12      within the right-of-way limits of roads or publicly  
13      owned rail corridors under their respective  
14      jurisdictions; prohibiting a municipality or county  
15      from requiring a utility to provide proprietary maps  
16      of facilities under certain circumstances; prohibiting  
17      a municipality or county from requiring a provider of  
18      communications services to provide proprietary maps of  
19      facilities under certain circumstances; amending s.  
20      337.403, F.S.; requiring a utility owner, under  
21      certain circumstances, to initiate at its own expense  
22      the work necessary to alleviate an interference to a  
23      public road, including directly associated drainage,  
24      or publicly owned rail corridor which is caused by the  
25      utility if the utility is placed within the right-of-  
26      way limits of the public road or publicly owned rail  
27      corridor; conforming a cross-reference; requiring an  
28      authority or an entity other than the authority to  
29      bear the costs of relocating a utility in certain

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30 circumstances; providing applicability; requiring the  
31 authority to bear the cost of the utility work  
32 necessary to eliminate an unreasonable interference if  
33 the utility is lawfully located within a certain  
34 utility easement; providing legislative findings;  
35 providing an effective date.

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

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

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

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

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

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59 public;

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

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

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

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

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

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

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

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

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

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

113 (2) The authority may grant to any person who is a resident  
114 of this state, or to any corporation which is organized under  
115 the laws of this state or licensed to do business within this  
116 state, the use of a right-of-way for the utility in accordance

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117 with such rules or regulations as the authority may adopt. No  
118 utility shall be installed, located, or relocated unless  
119 authorized by a written permit issued by the authority. However,  
120 for public roads or publicly owned rail corridors under the  
121 jurisdiction of the department, a utility relocation schedule  
122 and relocation agreement may be executed in lieu of a written  
123 permit. The permit shall require the permitholder to be  
124 responsible for any damage resulting from the issuance of such  
125 permit. In exercising its authority over a utility under this  
126 section, a municipality or county may not require a utility to  
127 provide proprietary maps of facilities where such facilities  
128 have been previously subject to a permit from the authority. The  
129 authority may initiate injunctive proceedings as provided in s.  
130 120.69 to enforce provisions of this subsection or any rule or  
131 order issued or entered into pursuant thereto.

132 (3)

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

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146 authority over providers of communications services under this  
147 section, a municipality or county may not require a provider of  
148 communications services to provide proprietary maps of  
149 facilities where such facilities have been previously subject to  
150 a permit from the authority.

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

153 337.403 Interference caused by utility; expenses.—

154 (1) If a utility that is placed upon, under, over, or  
155 within the right-of-way limits of ~~along~~ any public road or  
156 publicly owned rail corridor is found by the authority to be  
157 unreasonably interfering in any way with the convenient, safe,  
158 or continuous use, or the maintenance, improvement, extension,  
159 or expansion, of such public road, including directly associated  
160 drainage, or publicly owned rail corridor, the utility owner  
161 shall, upon 30 days' written notice to the utility or its agent  
162 by the authority, initiate the work necessary to alleviate the  
163 interference at its own expense except as provided in paragraphs  
164 (a)-(j) ~~(a)-(i)~~. The work must be completed within such  
165 reasonable time as stated in the notice or such time as agreed  
166 to by the authority and the utility owner. If an authority  
167 requires the relocation of a utility for purposes not described  
168 in this subsection, the authority shall bear the cost of  
169 relocating the utility. If the relocation is required as a  
170 condition or result of a project by an entity other than an  
171 authority, the entity other than the authority shall bear the  
172 costs of relocating the utility. However, nothing in this  
173 subsection shall impair any rights of the holder of any private  
174 railroad right-of-way, including any rights in any agreement

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175 between the holder of the private railroad right-of-way and a  
176 utility that otherwise allocates such relocation cost.

177 (a) If the relocation of utility facilities, as referred to  
178 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
179 84-627, is necessitated by the construction of a project on the  
180 federal-aid interstate system, including extensions thereof  
181 within urban areas, and the cost of the project is eligible and  
182 approved for reimbursement by the Federal Government to the  
183 extent of 90 percent or more under the Federal Aid Highway Act,  
184 or any amendment thereof, ~~then in that event~~ the utility owning  
185 or operating such facilities shall perform any necessary work  
186 upon notice from the department, and the state shall pay the  
187 entire expense properly attributable to such work after  
188 deducting therefrom any increase in the value of a new facility  
189 and any salvage value derived from an old facility.

190 (b) When a joint agreement between the department and the  
191 utility is executed for utility work to be accomplished as part  
192 of a contract for construction of a transportation facility, the  
193 department may participate in those utility work costs that  
194 exceed the department's official estimate of the cost of the  
195 work by more than 10 percent. The amount of such participation  
196 is limited to the difference between the official estimate of  
197 all the work in the joint agreement plus 10 percent and the  
198 amount awarded for this work in the construction contract for  
199 such work. The department may not participate in any utility  
200 work costs that occur as a result of changes or additions during  
201 the course of the contract.

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

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204 contract for construction of a transportation facility, the  
205 department may participate in the cost of clearing and grubbing  
206 necessary to perform such work.

207 (d) If the utility facility was initially installed to  
208 exclusively serve the authority or its tenants, or both, the  
209 authority shall bear the costs of the utility work. However, the  
210 authority is not responsible for the cost of utility work  
211 related to any subsequent additions to that facility for the  
212 purpose of serving others. For a county or municipality, if such  
213 utility facility was installed in the right-of-way as a means to  
214 serve a county or municipal facility on a parcel of property  
215 adjacent to the right-of-way and if the intended use of the  
216 county or municipal facility is for a use other than  
217 transportation purposes, the obligation of the county or  
218 municipality to bear the costs of the utility work shall extend  
219 only to utility work on the parcel of property on which the  
220 facility of the county or municipality originally served by the  
221 utility facility is located.

222 (e) If, under an agreement between a utility and the  
223 authority entered into after July 1, 2009, the utility conveys,  
224 subordinates, or relinquishes a compensable property right to  
225 the authority for the purpose of accommodating the acquisition  
226 or use of the right-of-way by the authority, without the  
227 agreement expressly addressing future responsibility for the  
228 cost of necessary utility work, the authority shall bear the  
229 cost of removal or relocation. This paragraph does not impair or  
230 restrict, and may not be used to interpret, the terms of any  
231 such agreement entered into before July 1, 2009.

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

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233 underground in order to enhance vehicular, bicycle, and  
234 pedestrian safety and in which ownership of the electric  
235 facility to be placed underground has been transferred from a  
236 private to a public utility within the past 5 years, the  
237 department shall incur all costs of the necessary utility work.

238 (g) An authority may bear the costs of utility work  
239 required to eliminate an unreasonable interference when the  
240 utility is not able to establish that it has a compensable  
241 property right in the particular property where the utility is  
242 located if:

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

245 2. The utility demonstrates that it has a compensable  
246 property right in adjacent properties along the alignment of the  
247 utility or, after due diligence, certifies that the utility does  
248 not have evidence to prove or disprove that it has a compensable  
249 property right in the particular property where the utility is  
250 located; and

251 3. The information available to the authority does not  
252 establish the relative priorities of the authority's and the  
253 utility's interests in the particular property.

254 (h) If a municipally owned utility or county-owned utility  
255 is located in a rural area of critical economic concern, as  
256 defined in s. 288.0656(2), and the department determines that  
257 the utility is unable, and will not be able within the next 10  
258 years, to pay for the cost of utility work necessitated by a  
259 department project on the State Highway System, the department  
260 may pay, in whole or in part, the cost of such utility work  
261 performed by the department or its contractor.

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262 (i) If the relocation of utility facilities is necessitated  
263 by the construction of a commuter rail service project or an  
264 intercity passenger rail service project and the cost of the  
265 project is eligible and approved for reimbursement by the  
266 Federal Government, then in that event the utility owning or  
267 operating such facilities located by permit on a department-  
268 owned rail corridor shall perform any necessary utility  
269 relocation work upon notice from the department, and the  
270 department shall pay the expense properly attributable to such  
271 utility relocation work in the same proportion as federal funds  
272 are expended on the commuter rail service project or an  
273 intercity passenger rail service project after deducting  
274 therefrom any increase in the value of a new facility and any  
275 salvage value derived from an old facility. In no event shall  
276 the state be required to use state dollars for such utility  
277 relocation work. This paragraph does not apply to any phase of  
278 the Central Florida Commuter Rail project, known as SunRail.

279 (j) If a utility is lawfully located within an existing and  
280 valid utility easement granted by recorded plat, regardless of  
281 whether such land was subsequently acquired by the authority by  
282 dedication, transfer of fee, or otherwise, the authority shall  
283 bear the cost of the utility work required to eliminate an  
284 unreasonable interference.

285 Section 4. The Legislature finds that a proper and  
286 legitimate state purpose is served by clarifying a utility's  
287 responsibility for relocating its facilities within the right-  
288 of-way or within a utility easement granted by recorded plat.  
289 Therefore, the Legislature determines and declares that this act  
290 fulfills an important state interest.

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