

1 A bill to be entitled
2 An act relating to the location of utilities; amending
3 s. 125.42, F.S.; authorizing a board of county
4 commissioners to grant a license to work on or operate
5 specified utility, television, or other communications
6 services lines within the right-of-way limits of
7 certain county or public highways or roads; conforming
8 a cross-reference; amending s. 337.401, F.S.;
9 specifying that the Department of Transportation and
10 certain local governmental entities may prescribe and
11 enforce rules or regulations regarding the placement
12 and maintenance of specified structures and lines
13 within the right-of-ways of roads or publicly owned
14 rail corridors under their respective jurisdictions;
15 prohibiting a municipality, county, or authority from
16 requiring a utility or a provider of communications
17 services to resubmit information already in the
18 possession of the respective entity; amending s.
19 337.403, F.S.; specifying that a utility located
20 within certain right-of-way limits must initiate and
21 pay for the work necessary to alleviate any
22 interference to the use of certain public roads or
23 rail corridors; requiring an authority to pay the cost
24 of requiring the relocation of a utility, under
25 certain circumstances; requiring an entity other than
26 the authority to pay the cost of certain relocations

27 of utilities under certain circumstances; requiring an
 28 authority to pay the cost of utility work required to
 29 eliminate unreasonable interference within certain
 30 existing utility easements; providing an effective
 31 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
 38 utility, and television lines within the right-of-way limits of
 39 ~~along~~ 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
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
68 of years, subject, however, to termination by the licensor, in
69 the 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), subsection
 84 (2), and paragraph (b) of subsection (3) of section 337.401,
 85 Florida Statutes, are amended to read:

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

88 (1) (a) The department and local governmental entities,
 89 referred to in this section and 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 ss. 337.402, 337.403, and
 101 337.404 as the "utility." The department may enter into a
 102 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 (2) The authority may grant to any person who is a
109 resident of this state, or to any corporation which is organized
110 under the laws of this state or licensed to do business within
111 this state, the use of a right-of-way for the utility in
112 accordance with such rules or regulations as the authority may
113 adopt. No utility shall be installed, located, or relocated
114 unless authorized by a written permit issued by the authority.
115 However, for public roads or publicly owned rail corridors under
116 the jurisdiction of the department, a utility relocation
117 schedule and relocation agreement may be executed in lieu of a
118 written permit. The permit shall require the permitholder to be
119 responsible for any damage resulting from the issuance of such
120 permit. In exercising its authority over a utility, a
121 municipality, county, or authority may not require a utility to
122 resubmit information already in the possession of the
123 municipality, county, or authority. The authority may initiate
124 injunctive proceedings as provided in s. 120.69 to enforce
125 provisions of this subsection or any rule or order issued or
126 entered into pursuant thereto.

127 (3)

128 (b) Registration described in paragraph (a) does not
129 establish a right to place or maintain, or priority for the
130 placement or maintenance of, a communications facility in roads

131 or rights-of-way of a municipality or county. Each municipality
 132 and county retains the authority to regulate and manage
 133 municipal and county roads or rights-of-way in exercising its
 134 police power. Any rules or regulations adopted by a municipality
 135 or county which govern the occupation of its roads or rights-of-
 136 way by providers of communications services must be related to
 137 the placement or maintenance of facilities in such roads or
 138 rights-of-way, must be reasonable and nondiscriminatory, and may
 139 include only those matters necessary to manage the roads or
 140 rights-of-way of the municipality or county. In exercising its
 141 authority over providers of communications services under this
 142 section, a municipality or county may not require a provider of
 143 communications services to resubmit information already in the
 144 possession of the municipality or county or previously provided
 145 to the municipality or county.

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

148 337.403 Interference caused by utility; expenses.—

149 (1) If a utility that is within the right-of-way limits of
 150 ~~placed upon, under, over, or along~~ any public road or publicly
 151 owned rail corridor is found by the authority to be unreasonably
 152 interfering in any way with the convenient, safe, or continuous
 153 use, or the maintenance, improvement, extension, or expansion,
 154 of such public road or publicly owned rail corridor, the utility
 155 owner shall, upon 30 days' written notice to the utility or its
 156 agent by the authority, initiate the work necessary to alleviate

157 the interference at its own expense except as provided in
158 paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within
159 such reasonable time as stated in the notice or such time as
160 agreed to by the authority and the utility owner. If an
161 authority requires the relocation of a utility for purposes not
162 described in this subsection, the authority shall bear the cost
163 of relocating the utility. If the relocation is required as a
164 condition or result of a project by an entity other than an
165 authority, the other entity shall bear the cost of relocating
166 the utility.

167 (a) If the relocation of utility facilities, as referred
168 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
169 84-627, is necessitated by the construction of a project on the
170 federal-aid interstate system, including extensions thereof
171 within urban areas, and the cost of the project is eligible and
172 approved for reimbursement by the Federal Government to the
173 extent of 90 percent or more under the Federal Aid Highway Act,
174 or any amendment thereof, ~~then in that event~~ the utility owning
175 or operating such facilities shall perform any necessary work
176 upon notice from the department, and the state shall pay the
177 entire expense properly attributable to such work after
178 deducting therefrom any increase in the value of a new facility
179 and any salvage value derived from an old facility.

180 (b) When a joint agreement between the department and the
181 utility is executed for utility work to be accomplished as part
182 of a contract for construction of a transportation facility, the

183 department may participate in those utility work costs that
184 exceed the department's official estimate of the cost of the
185 work by more than 10 percent. The amount of such participation
186 is limited to the difference between the official estimate of
187 all the work in the joint agreement plus 10 percent and the
188 amount awarded for this work in the construction contract for
189 such work. The department may not participate in any utility
190 work costs that occur as a result of changes or additions during
191 the course of the contract.

192 (c) When an agreement between the department and utility
193 is executed for utility work to be accomplished in advance of a
194 contract for construction of a transportation facility, the
195 department may participate in the cost of clearing and grubbing
196 necessary to perform such work.

197 (d) If the utility facility was initially installed to
198 exclusively serve the authority or its tenants, or both, the
199 authority shall bear the costs of the utility work. However, the
200 authority is not responsible for the cost of utility work
201 related to any subsequent additions to that facility for the
202 purpose of serving others. For a county or municipality, if such
203 utility facility was installed in the right-of-way as a means to
204 serve a county or municipal facility on a parcel of property
205 adjacent to the right-of-way and if the intended use of the
206 county or municipal facility is for a use other than
207 transportation purposes, the obligation of the county or
208 municipality to bear the costs of the utility work shall extend

209 only to utility work on the parcel of property on which the
210 facility of the county or municipality originally served by the
211 utility facility is located.

212 (e) If, under an agreement between a utility and the
213 authority entered into after July 1, 2009, the utility conveys,
214 subordinates, or relinquishes a compensable property right to
215 the authority for the purpose of accommodating the acquisition
216 or use of the right-of-way by the authority, without the
217 agreement expressly addressing future responsibility for the
218 cost of necessary utility work, the authority shall bear the
219 cost of removal or relocation. This paragraph does not impair or
220 restrict, and may not be used to interpret, the terms of any
221 such agreement entered into before July 1, 2009.

222 (f) If the utility is an electric facility being relocated
223 underground in order to enhance vehicular, bicycle, and
224 pedestrian safety and in which ownership of the electric
225 facility to be placed underground has been transferred from a
226 private to a public utility within the past 5 years, the
227 department shall incur all costs of the necessary utility work.

228 (g) An authority may bear the costs of utility work
229 required to eliminate an unreasonable interference when the
230 utility is not able to establish that it has a compensable
231 property right in the particular property where the utility is
232 located if:

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

235 2. The utility demonstrates that it has a compensable
236 property right in adjacent properties along the alignment of the
237 utility or, after due diligence, certifies that the utility does
238 not have evidence to prove or disprove that it has a compensable
239 property right in the particular property where the utility is
240 located; and

241 3. The information available to the authority does not
242 establish the relative priorities of the authority's and the
243 utility's interests in the particular property.

244 (h) If a municipally owned utility or county-owned utility
245 is located in a rural area of critical economic concern, as
246 defined in s. 288.0656(2), and the department determines that
247 the utility is unable, and will not be able within the next 10
248 years, to pay for the cost of utility work necessitated by a
249 department project on the State Highway System, the department
250 may pay, in whole or in part, the cost of such utility work
251 performed by the department or its contractor.

252 (i) If the relocation of utility facilities is
253 necessitated by the construction of a commuter rail service
254 project or an intercity passenger rail service project and the
255 cost of the project is eligible and approved for reimbursement
256 by the Federal Government, then in that event the utility owning
257 or operating such facilities located by permit on a department-
258 owned rail corridor shall perform any necessary utility
259 relocation work upon notice from the department, and the
260 department shall pay the expense properly attributable to such

261 utility relocation work in the same proportion as federal funds
262 are expended on the commuter rail service project or an
263 intercity passenger rail service project after deducting
264 therefrom any increase in the value of a new facility and any
265 salvage value derived from an old facility. In no event shall
266 the state be required to use state dollars for such utility
267 relocation work. This paragraph does not apply to any phase of
268 the Central Florida Commuter Rail project, known as SunRail.

269 (j) If a utility is located within an existing and valid
270 utility easement granted by recorded plat, regardless of whether
271 such land was subsequently acquired by the authority by
272 dedication, transfer of fee, or otherwise, the authority shall
273 bear the cost of the utility work required to eliminate an
274 unreasonable interference.

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