

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 or county from requiring a
16 utility or a provider of communications services to
17 resubmit information already in the possession of the
18 respective entity; amending s. 337.403, F.S.;
19 specifying that a utility located within certain
20 right-of-way limits must initiate and pay for the work
21 necessary to alleviate any interference to the use of
22 certain public roads or rail corridors; requiring an
23 authority to pay the cost of requiring the relocation
24 of a utility, under certain circumstances; requiring
25 an entity other than the authority to pay the cost of
26 certain relocations of utilities under certain

27 | circumstances; requiring an authority to pay the cost
 28 | of utility work required to eliminate unreasonable
 29 | interference within certain existing utility
 30 | easements; providing an effective date.

31 |

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

33 |

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

36 | 125.42 Water, sewage, gas, power, telephone, other
 37 | utility, and television lines within the right-of-way limits of
 38 | ~~along~~ county roads and highways.-

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

51 | (a) To prevent the creation of any obstructions or
 52 | conditions which are or may become dangerous to the traveling

53 public;

54 (b) To require the licensee to repair any damage or injury
55 to the road or highway by reason of the exercise of the
56 privileges granted in any instrument creating such license and
57 to repair the road or highway promptly, restoring it to a
58 condition at least equal to that which existed immediately prior
59 to the infliction of such damage or injury;

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

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

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

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

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

76 (5) In the event of widening, repair, or reconstruction of
77 any such road, the licensee shall move or remove such water,
78 sewage, gas, power, telephone, and other utility lines and

79 television lines at no cost to the county should they be found
 80 by the county to be unreasonably interfering, except as provided
 81 in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

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

85 337.401 Use of right-of-way for utilities subject to
 86 regulation; permit; fees.—

87 (1)(a) The department and local governmental entities,
 88 referred to in this section and ss. 337.402, 337.403, and
 89 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have
 90 jurisdiction and control of public roads or publicly owned rail
 91 corridors are authorized to prescribe and enforce reasonable
 92 rules or regulations with reference to the placing and
 93 maintaining within the right-of-way limits of ~~along, across, or~~
 94 ~~on~~ any road or publicly owned rail corridors under their
 95 respective jurisdictions any electric transmission, telephone,
 96 telegraph, or other communications services lines; pole lines;
 97 poles; railways; ditches; sewers; water, heat, or gas mains;
 98 pipelines; fences; gasoline tanks and pumps; or other structures
 99 referred to in this section and ss. 337.402, 337.403, and
 100 337.404 as the "utility." The department may enter into a
 101 permit-delegation agreement with a governmental entity if
 102 issuance of a permit is based on requirements that the
 103 department finds will ensure the safety and integrity of
 104 facilities of the Department of Transportation; however, the

105 permit-delegation agreement does not apply to facilities of
106 electric utilities as defined in s. 366.02(2).

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

125 (3)

126 (b) Registration described in paragraph (a) does not
127 establish a right to place or maintain, or priority for the
128 placement or maintenance of, a communications facility in roads
129 or rights-of-way of a municipality or county. Each municipality
130 and county retains the authority to regulate and manage

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

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

146 337.403 Interference caused by utility; expenses.—

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

157 such reasonable time as stated in the notice or such time as
158 agreed to by the authority and the utility owner. If an
159 authority requires the relocation of a utility for purposes not
160 described in this subsection, the authority shall bear the cost
161 of relocating the utility. If the relocation is required as a
162 condition or result of a project by an entity other than an
163 authority, the other entity shall bear the cost of relocating
164 the utility.

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

178 (b) When a joint agreement between the department and the
179 utility is executed for utility work to be accomplished as part
180 of a contract for construction of a transportation facility, the
181 department may participate in those utility work costs that
182 exceed the department's official estimate of the cost of the

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

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

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

209 utility facility is located.

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

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

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

- 231 1. The utility was physically located on the particular
232 property before the authority acquired rights in the property;
- 233 2. The utility demonstrates that it has a compensable
234 property right in adjacent properties along the alignment of the

235 utility or, after due diligence, certifies that the utility does
236 not have evidence to prove or disprove that it has a compensable
237 property right in the particular property where the utility is
238 located; and

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

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

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

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

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

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