

1                                   A bill to be entitled  
2           An act relating to the location of utilities; amending  
3           s. 125.42, F.S.; revising the circumstances under  
4           which a board of county commissioners is authorized to  
5           grant to a person or private corporation a license for  
6           specified projects related to lines for the  
7           transmission of certain public utilities and  
8           communication services; conforming a cross-reference;  
9           amending s. 337.401, F.S.; authorizing the Department  
10          of Transportation and certain local governmental  
11          entities to prescribe and enforce rules or regulations  
12          regarding the placement and maintenance of specified  
13          structures and lines within the right-of-way limits of  
14          roads or publicly owned rail corridors under their  
15          respective jurisdictions; conforming cross-references;  
16          amending s. 337.403, F.S.; specifying that the owner  
17          of a utility located within certain right-of-way  
18          limits must initiate and bear the cost necessary to  
19          alleviate any interference to the use of certain  
20          public roads or rail corridors under certain  
21          circumstances; conforming a cross-reference; requiring  
22          the authority to bear the cost of the utility work  
23          necessary to eliminate an unreasonable interference if  
24          the utility is lawfully located within a certain  
25          utility easement, subject to certain deductions;  
26          providing findings of an important state interest;

27 providing an effective date.

28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Section 125.42, Florida Statutes, is amended to  
32 read:

33 125.42 Water, sewage, gas, power, telephone, other  
34 utility, and television lines within the right-of-way limits of  
35 ~~along~~ county roads and highways.-

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

49 (a) To prevent the creation of any obstructions or  
50 conditions which are or may become dangerous to the traveling  
51 public;

52 (b) To require the licensee to repair any damage or injury

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

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

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

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

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

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

74 (5) In the event of widening, repair, or reconstruction of  
75 any such road, the licensee shall move or remove such water,  
76 sewage, gas, power, telephone, and other utility lines and  
77 television lines at no cost to the county should they be found  
78 by the county to be unreasonably interfering, except as provided

79 in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

80 Section 2. Paragraph (a) of subsection (1) of section  
81 337.401, Florida Statutes, is amended to read:

82 337.401 Use of right-of-way for utilities subject to  
83 regulation; permit; fees.—

84 (1)(a) The department and local governmental entities,  
85 referred to in this section and in ss. 337.402, 337.403, and  
86 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have  
87 jurisdiction and control of public roads or publicly owned rail  
88 corridors are authorized to prescribe and enforce reasonable  
89 rules or regulations with reference to the placing and  
90 maintaining ~~along,~~ across, ~~or on,~~ or within the right-of-way  
91 limits of any road or publicly owned rail corridors under their  
92 respective jurisdictions any electric transmission, telephone,  
93 telegraph, or other communications services lines; pole lines;  
94 poles; railways; ditches; sewers; water, heat, or gas mains;  
95 pipelines; fences; gasoline tanks and pumps; or other structures  
96 referred to in this section and in ss. 337.402, 337.403, and  
97 337.404 as the "utility." The department may enter into a  
98 permit-delegation agreement with a governmental entity if  
99 issuance of a permit is based on requirements that the  
100 department finds will ensure the safety and integrity of  
101 facilities of the Department of Transportation; however, the  
102 permit-delegation agreement does not apply to facilities of  
103 electric utilities as defined in s. 366.02(2).

104 Section 3. Subsection (1) of section 337.403, Florida

105 Statutes, is amended to read:

106 337.403 Interference caused by utility; expenses.—

107 (1) If a utility that is placed upon, under, over, or  
108 within the right-of-way limits of ~~along~~ any public road or  
109 publicly owned rail corridor is found by the authority to be  
110 unreasonably interfering in any way with the convenient, safe,  
111 or continuous use, or the maintenance, improvement, extension,  
112 or expansion, of such public road or publicly owned rail  
113 corridor, the utility owner shall, upon 30 days' written notice  
114 to the utility or its agent by the authority, initiate the work  
115 necessary to alleviate the interference at its own expense  
116 except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must  
117 be completed within such reasonable time as stated in the notice  
118 or such time as agreed to by the authority and the utility  
119 owner.

120 (a) If the relocation of utility facilities, as referred  
121 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
122 84-627, is necessitated by the construction of a project on the  
123 federal-aid interstate system, including extensions thereof  
124 within urban areas, and the cost of the project is eligible and  
125 approved for reimbursement by the Federal Government to the  
126 extent of 90 percent or more under the Federal Aid Highway Act,  
127 or any amendment thereof, then in that event the utility owning  
128 or operating such facilities shall perform any necessary work  
129 upon notice from the department, and the state shall pay the  
130 entire expense properly attributable to such work after

131 deducting therefrom any increase in the value of a new facility  
132 and any salvage value derived from an old facility.

133 (b) When a joint agreement between the department and the  
134 utility is executed for utility work to be accomplished as part  
135 of a contract for construction of a transportation facility, the  
136 department may participate in those utility work costs that  
137 exceed the department's official estimate of the cost of the  
138 work by more than 10 percent. The amount of such participation  
139 is limited to the difference between the official estimate of  
140 all the work in the joint agreement plus 10 percent and the  
141 amount awarded for this work in the construction contract for  
142 such work. The department may not participate in any utility  
143 work costs that occur as a result of changes or additions during  
144 the course of the contract.

145 (c) When an agreement between the department and utility  
146 is executed for utility work to be accomplished in advance of a  
147 contract for construction of a transportation facility, the  
148 department may participate in the cost of clearing and grubbing  
149 necessary to perform such work.

150 (d) If the utility facility was initially installed to  
151 exclusively serve the authority or its tenants, or both, the  
152 authority shall bear the costs of the utility work. However, the  
153 authority is not responsible for the cost of utility work  
154 related to any subsequent additions to that facility for the  
155 purpose of serving others. For a county or municipality, if such  
156 utility facility was installed in the right-of-way as a means to

157 | serve a county or municipal facility on a parcel of property  
158 | adjacent to the right-of-way and if the intended use of the  
159 | county or municipal facility is for a use other than  
160 | transportation purposes, the obligation of the county or  
161 | municipality to bear the costs of the utility work shall extend  
162 | only to utility work on the parcel of property on which the  
163 | facility of the county or municipality originally served by the  
164 | utility facility is located.

165 |       (e) If, under an agreement between a utility and the  
166 | authority entered into after July 1, 2009, the utility conveys,  
167 | subordinates, or relinquishes a compensable property right to  
168 | the authority for the purpose of accommodating the acquisition  
169 | or use of the right-of-way by the authority, without the  
170 | agreement expressly addressing future responsibility for the  
171 | cost of necessary utility work, the authority shall bear the  
172 | cost of removal or relocation. This paragraph does not impair or  
173 | restrict, and may not be used to interpret, the terms of any  
174 | such agreement entered into before July 1, 2009.

175 |       (f) If the utility is an electric facility being relocated  
176 | underground in order to enhance vehicular, bicycle, and  
177 | pedestrian safety and in which ownership of the electric  
178 | facility to be placed underground has been transferred from a  
179 | private to a public utility within the past 5 years, the  
180 | department shall incur all costs of the necessary utility work.

181 |       (g) An authority may bear the costs of utility work  
182 | required to eliminate an unreasonable interference when the

183 utility is not able to establish that it has a compensable  
184 property right in the particular property where the utility is  
185 located if:

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

188 2. The utility demonstrates that it has a compensable  
189 property right in adjacent properties along the alignment of the  
190 utility or, after due diligence, certifies that the utility does  
191 not have evidence to prove or disprove that it has a compensable  
192 property right in the particular property where the utility is  
193 located; and

194 3. The information available to the authority does not  
195 establish the relative priorities of the authority's and the  
196 utility's interests in the particular property.

197 (h) If a municipally owned utility or county-owned utility  
198 is located in a rural area of opportunity, as defined in s.  
199 288.0656(2), and the department determines that the utility is  
200 unable, and will not be able within the next 10 years, to pay  
201 for the cost of utility work necessitated by a department  
202 project on the State Highway System, the department may pay, in  
203 whole or in part, the cost of such utility work performed by the  
204 department or its contractor.

205 (i) If the relocation of utility facilities is  
206 necessitated by the construction of a commuter rail service  
207 project or an intercity passenger rail service project and the  
208 cost of the project is eligible and approved for reimbursement



209 by the Federal Government, then in that event the utility owning  
210 or operating such facilities located by permit on a department-  
211 owned rail corridor shall perform any necessary utility  
212 relocation work upon notice from the department, and the  
213 department shall pay the expense properly attributable to such  
214 utility relocation work in the same proportion as federal funds  
215 are expended on the commuter rail service project or an  
216 intercity passenger rail service project after deducting  
217 therefrom any increase in the value of a new facility and any  
218 salvage value derived from an old facility. In no event shall  
219 the state be required to use state dollars for such utility  
220 relocation work. This paragraph does not apply to any phase of  
221 the Central Florida Commuter Rail project, known as SunRail.

222 (j) If a utility is lawfully located within an existing  
223 and valid utility easement granted by recorded plat, regardless  
224 of whether such land was subsequently acquired by the authority  
225 by dedication, transfer of fee, or otherwise, the authority must  
226 bear the cost of the utility work required to eliminate an  
227 unreasonable interference. The authority shall pay the entire  
228 expense properly attributable to such work after deducting any  
229 increase in the value of a new facility and any salvage value  
230 derived from an old facility.

231 Section 4. The Legislature finds that a proper and  
232 legitimate state purpose is served by clarifying a utility's  
233 responsibility for relocating its facilities within a utility  
234 easement granted by recorded plat. Therefore, the Legislature

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235 | determines and declares that this act fulfills an important  
236 | state interest.

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