

CHAPTER 2016-44

Committee Substitute for Senate Bill No. 416

An act relating to the location of utilities; amending s. 125.42, F.S.; revising the circumstances under which a board of county commissioners is authorized to grant to a person or private corporation a license for specified projects related to lines for the transmission of certain public utilities and communication services; conforming a cross-reference; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce rules or regulations regarding the placement and maintenance of specified structures and lines within the right-of-way limits of roads or publicly owned rail corridors under their respective jurisdictions; conforming cross-references; amending s. 337.403, F.S.; specifying that the owner of a utility located within certain right-of-way limits must initiate and bear the cost necessary to alleviate any interference to the use of certain public roads or rail corridors under certain circumstances; conforming a cross-reference; requiring the authority to bear the cost of the utility work necessary to eliminate an unreasonable interference if the utility is lawfully located within a certain utility easement, subject to certain deductions; providing findings of an important state interest; providing an effective date.

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

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

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

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair the road or highway

promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;

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

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

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

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

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

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

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

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

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

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

337.403 Interference caused by utility; expenses.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an intercity passenger rail service

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

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

Section 4. The Legislature finds that a proper and legitimate state purpose is served by clarifying a utility's responsibility for relocating its facilities within a utility easement granted by recorded plat. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.