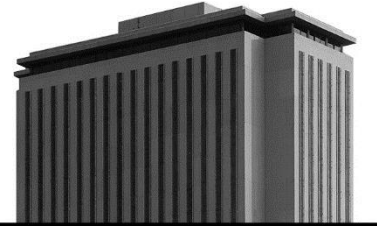




LEGISLATIVE ISSUE BRIEFS



Relocation of Utilities

Priority Statement:

The Florida League of Cities OPPOSES legislation that mandates local governments and their taxpayers bear the cost of relocating utility equipment when the equipment is located within a public utility easement or right of way and needs to be relocated for public purposes.

Background:

For more than 100 years, state law has provided local government with the authority to require non-government utilities to pay the costs associated with relocating their utility equipment out of public rights of way and public utility easements to accommodate public construction projects, such as road improvement projects, and other non-transportation public projects. Public utility easements and public rights of way are controlled by local government and access is provided to utilities as a permissive use. Generally, a utility is required to pay the costs to relocate its equipment when relocation is in the public interest.

In many communities, a “public utility easement” is created by dedication in a land developer’s plat for a new community, such as: “The owners of this property do hereby dedicate easements along each boundary of each home site for county drainage purposes and for public utilities.” Typically, public utility easements do not exceed six to 10 feet in width and run alongside public rights of way in the case of roadways.

Like rights of way, courts have found that public utility easements are for the benefit of the public and, therefore, are not owned by utilities. Instead, such easements function as public property for the use of utilities. Thereby, developers create interests relating to particular (limited) property uses by third parties who then use the property to provide essential public services. Occasionally, utilities purchase these property interests, but often they do not, leaving local authorities with the burden of purchasing property for public easements and/or rights of way as part of roadway improvement projects.

If local governments are required to bear the cost of relocation, it would dramatically and negatively affect them by transferring the costs of utility relocations from the utility provider to local government taxpayers, instead of the actual users of the utilities. In many cases, the utility equipment to be relocated does not service the constituent taxpayers of that municipality or county, but services a neighboring local government.

The expense of relocating a utility’s equipment in the public easement, or for non-transportation purposes within the right of way, will greatly increase the costs of completing transportation projects at a time when local governments continue to struggle with funding for such projects. Transportation projects are often the catalyst for economic development and the result of growth within a community, which benefit the utility in terms of an expanded customer base.

In 2015, **CS/CS/CS/HB 391** and **CS/CS/SB 896** were filed and would have prohibited local governments from requiring utilities to pay the costs of equipment relocation unless the utilities were in a

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“right of way,” as opposed to the current requirement for utility relocations occurring “upon, over, under or along” a roadway. The bills would have required local governments, and not the utilities, to bear the cost of relocating a utility’s equipment if such equipment is located within a public utility easement. In addition, the bills would have required local governments to bear the costs of utility equipment relocation if the equipment was located within the right of way and needed to be relocated for a non-transportation purpose. CS/CS/CS/HB 391 passed the House 110-5, but was never heard by the full Senate. CS/CS/SB 896 was never heard by the Senate Appropriations Committee, which was its last committee of reference.

Current Status:

To date, no bills have been filed for the 2016 legislative session that directly address the cost shifting of utility relocations.

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