

STORAGE NAME: h1263s1.cjcl

DATE: April 11, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1263

RELATING TO: Underground Facility and Safety Act

SPONSOR(S): Committee on Utilities and Communications, Rep. Dockery and Others

STATUTE(S) AFFECTED: ss. 556.106 and 556.108, F.S.

COMPANION BILL(S): SB 1598

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS YEAS 13 NAYS 0
- (2) CIVIL JUSTICE & CLAIMS YEAS 8 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

The Underground Facility Damage Prevention and Safety Act, codified at Chapter 556, Florida Statutes, was intended to provide a toll-free number for excavating contractors and the general public to call for notification of one's intent to engage in excavation or demolition. This notification is to be not less than two nor more than five business days before beginning any excavation or demolition.

After system notification, an excavator must refrain from excavation until the procedure provisions of section 556.105, Florida Statutes, are complied with as stipulated. The excavator may then proceed with the excavation.

Section 556.108, Florida Statutes, provides certain exemptions for the one-call notification requirements. Subsection 556.108(4), Florida Statutes, provides exemptions for excavation of 18 inches or less provided no mechanized equipment is used in the process.

This bill would strike and revise the notification exemption requirements of section 556.108, Florida Statutes. The bill would delete provisions allowing an exemption to the notification requirements for excavation of 18 inches or less for locating or protecting underground facilities, or for extending underground facilities onto one-to-four family residential property provided "no mechanized equipment" is used in any process. The bill would also impose a depth restriction of (30) inches for these operations in a right-of-way under certain circumstances.

The bill would add a new subsection(5) to 556.108, Florida Statutes, which would allow for certain excavation operations, routine maintenance, or for the extension of a member operator's facilities onto the property of a person served by the facilities, without a depth restriction, provided hand tools are used in the process.

The bill would add a new subsection (5) to section 556.106, Florida Statutes, to impose liability upon any excavator who performs any excavation with hand tools pursuant to the exemptions of subsection 556.108(5), Florida Statutes.

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This bill would have no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Underground Facility Damage Prevention and Safety Act, codified at Chapter 556, Florida Statutes, was intended to provide a toll-free number for excavating contractors and the general public to call for notification of one's intent to engage in excavation or demolition.

Pursuant to section 556.105(1), Florida Statutes, this notification is to be not less than two nor more than five business days before beginning any excavation or demolition. This one-call system is to aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility.

After system notification, and pursuant to subsection 556.105(6)(a), Florida Statutes, an excavator must refrain from excavation in the noticed area until each member operator's underground facility has been located and marked, or until the excavator has been notified that no member facilities exist in the area, or for 48 hours of no contact, excluding days other than business days, after notification, whichever comes first. The excavator may then proceed with the excavation, provided it is done with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used.

Section 556.108, Florida Statutes outlines exemptions to the notification requirements provided in section 556.105(1), Florida Statutes. Subsection 556.108(4), Florida Statutes, provides exemption for any excavation of 18 inches or less for:

- (a) Surveying public or private property by surveyors or mappers as defined in chapter 472, excluding marked rights-of-way, marked easements, or permitted uses where marked, provided mechanized equipment is not used in the process of such surveying and surveying is performed in accordance with the practice rules established under s. 472.027;
- (b) Locating or protecting underground facilities, provided no mechanized equipment is used in the process of locating or protecting such underground facilities;
- (c) Extending underground facilities from an easement, right-of-way, or area of permitted use onto the four-family, three-family, two-family, or single-family residential property of the person to be served by such facilities, provided that, in the process of such extension, no mechanized equipment is used on any operator's marked right-of-way, easement, or permitted use; or
- (d) Maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road, provided, if a member operator has permanently marked facilities on such right-of-way, no mechanized equipment may be used without first providing notification.

Section 556.106, Florida Statutes, outlines the liability of the member operator, excavator, and one-call system. It provides, in part:

(2)(a) In the event any person violates s.556.105(1) or (6), and subsequently, whether by himself or through his employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground facility of a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited. Any liability of the state and its agencies and its subdivisions which arises out of this chapter shall be subject to the provisions of s. 768.28.

(d) Obtaining information as to the location of an underground facility from the member operator as required by this act does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, nor does it excuse such excavation from liability for any damage or injury resulting from any excavation or demolition.

B. EFFECT OF PROPOSED CHANGES:

This bill would revise the requirements of one-call notification exemptions in section 556.108, Florida Statutes, by deleting the provisions allowing excavations of 18 inches or less for locating or protecting underground facilities as long as "no mechanized equipment is used in the process. It would also delete the 18 inches or less depth restriction for extending underground facilities from an easement; right-of-way; or area of permitted use onto one-to-four family residential property which is to be served by the facility.

It would provide a new exemption from the notification requirements, under section 556.108(5)(a), Florida Statutes, for any excavation by a member operator or agent using "hand tools" for locating, repairing, connecting, or protecting, or routine maintenance of the member operator's underground facilities.

Also under section 556.108(5), Florida Statutes, the bill would add subsection (c) to provide a notification exemption and impose a depth restriction of (30) inches for excavation operations, referred to in section 556.108(5)(a), Florida Statutes, in a right-of-way with the permanently marked facilities of a company other than the member operator or its agents performing the excavation.

The bill would add under section 556.108(5)(b), Florida Statutes, the "hand tool" exemption for extending the member operator's underground facilities onto the property of a person to be served by such facilities.

The bill would add a subsection (5) to section 556.106, Florida Statutes, to impose liability upon any excavator who performs any excavation with hand tools pursuant to the exemptions of subsection 556.108(5), Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

N/A.

(1) any authority to make rules or adjudicate disputes?

N/A.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A.

(3) any entitlement to a government service or benefit?

N/A.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A.

b. Does the bill require or authorize an increase in any fees?

N/A.

c. Does the bill reduce total taxes, both rates and revenues?

N/A.

d. Does the bill reduce total fees, both rates and revenues?

N/A.

e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

N/A.

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Please see "Effect of Proposed Changes" section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A.

2. Direct Private Sector Benefits:

N/A.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

N/A.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Committee on Civil Justice & Claims

The staff of the Committee on Civil Justice and Claims has reviewed CS/HB 1263. It does not appear to significantly alter current law related to liability. Two technical amendments were adopted at the April 10, 1997, meeting of the Committee on Civil Justice and Claims.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Communications committee substitute will give the notification exemption to operations performed pursuant to section 556.108(5)(a), Florida Statutes, an excavation depth limit of (30) inches when the excavation is in a right-of-way with the permanently marked facilities of a company other than the member operator or its agents performing the excavation.

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VII. SIGNATURES:

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