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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 535

RELATING TO: Underground Facility Damage Prevention and Safety Act

SPONSOR(S): Representatives Bloom and Kelly

STATUTE(S) AFFECTED: ss. 556.101, 556.102, 556.103, 556.104, 556.106, and 556.110, F.S.

COMPANION BILL(S): SB 1646

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

- (1) GOVERNMENTAL OPERATIONS (W/D)
- (2) UTILITIES AND COMMUNICATIONS
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation in their area. This system operates from proportionately accessed monthly member fees, and membership in the corporation is discretionary to any operator of underground facilities. The corporation currently has a primary membership of 215, and this membership is made up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church. The non-membership of any underground facility operator does not relinquish any of its legal rights in the event of damage caused by willful negligence.

This bill would require all operators of underground facilities to become members of and participate in the one-call system which is administered by Sunshine State One-Call of Florida, Inc. and governed by Chapter 556, Florida Statutes.

The bill would define any operator of underground facilities as a member operator. Member operators would be assessed a monthly fee as their proportionate share of the corporation's operational costs with a monthly fee exemption for those members who receive ten or fewer notifications.

The bill would delete language that states that it is not the purpose of the act to create liability for any non-member operator of underground facilities.

The bill would also repeal language which states that when an excavator knows or should have known about the presence of underground facilities, the excavator must make reasonable efforts to contact the person who owns the facility.

This bill would have an indeterminate fiscal impact.

HB535 takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

. . .any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to located the underground facilities. The excavator is not liable, under this section for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

This bill would require all operators of underground utilities to become members of and participate in the one-call system rather than making it discretionary. The monthly assessment imposed upon members for the operating cost of the corporation would be continued, and as a result of the mandatory membership provision of the bill, all operators of underground facilities will be required to pay. However, the bill would add a provision whereby this fee may be waived for any particular month, provided, if during that month, the member receives 10 or fewer notifications.

HB 535 would delete the caveat that no liability for negligence is created by chapter 556, Florida Statutes, for operators that are not participating in the one-call notification system. This provision would be unnecessary since participation in the system would be mandatory under the provisions of the bill.

The bill would repeal paragraph (e) of section 556.106(2), Florida Statutes, that requires an excavator, who knows or should know of the existence of an underground facility, to make a reasonable effort to contact the person who owns or operates the facility prior to commencing any excavation or demolition. The information would be obtainable through the one-call notification system if all operators are required to become members.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

(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?

This bill may require older cities locate and identify their underground utilities.

(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:

- (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 ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & 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:

Indeterminate.

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 require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc. This appears to be a mandate under Article VII, section 18, Florida Constitution.

As a result, it is unclear whether the bill comes under the exemption as having an insignificant fiscal impact since the fiscal impact is indeterminate at this time.

If the Legislature determines that the bill fulfills an important state interest, it appears that the bill would meet the exception that the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

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:

Advocates for Sunshine State One-Call of Florida, Inc. report the elimination of guesswork concerning the location of underground facilities has produced an increasing reduction in utility interruptions since the inception of the one-call system largely due to their increasing rise in membership.

According to the Florida League of Cities, it too has a consensus about the importance of protecting their underground facilities. However, there is a concern about some cities being able to manually locate all of their underground facilities, particularly in older cities where the underground system has been in place for several decades and was laid during a time when utility mapping was not a precise practice. A majority of these types of cities can designate what underground facilities are in a right-of-way but cannot tell within the right-of-way specifically where a utility is located without excavation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

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