

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2084
 SPONSOR: Regulated Industries Committee and Senator Holzendorf
 SUBJECT: Underground Facility Damage Prevention and Safety Act

DATE: March 11, 2002

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	Bimholz	Maclure	CM	Favorable
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute substantially revises ch. 556, F.S., the Underground Facility Damage Prevention and Safety Act. In doing so, this committee substitute amends procedures governing the administration of the act, revises provisions relating to liability under the act, and adds certain penalty provisions. A new section is also added to the act, which establishes procedures by which certain owners of underground facilities may perform design services for engineers, architects, surveyors, and planners.

This committee substitute substantially amends the following sections of the Florida Statutes: 556.101, 556.102, 556.104, 556.105, 556.106, and 556.107. This committee substitute creates section 556.112, Florida Statutes.

II. Present Situation:

Underground Facilities¹

Underground facilities have become increasingly complex and congested. Power and communication lines have joined water, sewer, and gas distribution lines underground. Petroleum product and natural gas transmission lines have become more numerous, and slurry product lines and cable television lines have been added to the mix. The deregulation of telecommunications services has also added dozens of new underground lines for long-distance carriers.

¹ Material in this subsection of the analysis is drawn from and based on the following source: United States Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, *Common Ground: Study of One-Call Systems and Damage Prevention Best Practices*, June 1999, pp. 1, 15-16.

Many new underground facilities have been directly buried and, thus, can be easily damaged by excavation or use of locating methods intended to prevent damage. Television cables of foam-filled aluminum tubes can be easily dented, resulting in a loss of use, and thin fiber-optic telecommunications lines that may carry thousands of channels can be cut with a shovel. Usually, these lines cannot be readily detected with ordinary locating instruments.

Damage to underground facilities can affect the vital services and products delivered through those facilities. Underground facility damage can result in injury and death, as well as severe property damage and loss of vital services and products, such as telecommunications, water and sewer, electricity, cable television, and the flow and supply of liquid petroleum and natural gas. Damage can cause vital facility outages for homes, businesses, hospitals, air traffic control operations, and emergency service providers.

Damages to underground facilities are usually preventable and most frequently occur due to a breakdown in the damage-prevention process. This prevention process includes elements such as planning, effective use of one-call systems, accurate location and marking of underground facilities, adherence to safe digging practices, proper placement of facilities, and strong public education and awareness campaigns. At the heart of damage prevention is improved information accuracy and consistency in the communications that occur between excavators and operators of underground facilities. One-call systems provide a reliable and efficient process for excavators to notify facility owners/operators of planned excavations.² The one-call process allows operators with facilities in the vicinity of a proposed excavation site to mark the location of their equipment and facilities in advance of the excavation. This gives excavators knowledge by which to excavate safely.

Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., may be cited as the Underground Facility Damage Prevention and Safety Act (act).³

Section 556.101, F.S., provides that it is the intent of the Legislature 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. This notification system must provide the

² For example, the purpose of the one-call system in Florida is to receive notification of planned excavation or demolition activities and to notify member operators of such planned excavation or demolition activities. The system provides a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities. (*See* s. 556.104, F.S.)

³ Section 556.102(9), F.S., defines the term “underground facility” to mean any public or private personal property (except storm drainage systems and certain liquefied petroleum gas lines and certain petroleum storage systems) which is buried, placed below ground, or submerged on any member operator’s right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines.

member operators an opportunity to identify and locate their underground facilities.⁴ The purposes of the act are to help the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations; to create a not-for-profit corporation composed of operators of underground facilities in this state to administer the provisions of this act; and to fund the cost of such administration entirely with assessed contributions from member operators. This section further provides that it is not the purpose of the act to create liability for negligence on the part of any municipality or county operator of an underground facility which elects not to participate in the one-call notification system created by the act.

Section 556.102, F.S., defines terms used in the act.

Section 556.103, F.S., creates Sunshine State One-Call of Florida, Inc., (corporation) as a not-for-profit corporation that must administer the provisions of the act. Each operator of an underground facility in this state must be a member of the corporation and must use and participate in the system. However, a small city as defined in s. 120.52, F.S., may elect by January 1, 1998, not to participate in the system until January 1, 2003.

Section 556.104, F.S., directs the corporation to establish a one-call toll-free telephone notification system (system). Any person who furnishes or transports materials or services by means of an underground facility in this state must participate as a member operator of the system except that a small city as defined in s. 120.52, F.S., may elect not to participate in the system in the manner set forth in s. 556.103(1), F.S. The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of such planned excavation or demolition activities. The system must provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities.

Section 556.105, F.S., establishes procedures for the system. Not less than 2 nor more than 5 business days before beginning any excavation or demolition, an excavator must provide certain information through the system by calling the statewide toll-free number or by such other method as authorized by the corporation (s. 556.105(1), F.S.). Such information includes the county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.

All member operators within the defined area of a proposed excavation or demolition must be promptly notified through the system, except that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate such facilities (s. 556.105(4), F.S.). If a member operator determines that an excavation or demolition is not near an existing underground facility of the operator, the member operator must notify the excavator within 48 hours (excluding days other than business days) from the time of the notification to the system that no conflict exists and that the excavation or demolition area is

⁴ Section 556.102(7), F.S., defines the term “member operator” to mean any person who furnishes or transports materials or services by means of an underground facility except a municipality or county that has elected not to participate in the one-call notification system in the manner set forth in s. 556.103(1), F.S.

clear (s. 556.105(9), F.S.). An excavator who has knowledge of the existence of an underground facility of a member operator in the area is responsible for contacting the member operator if a facility is not marked. However, if a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the operator, the operator must identify (by use of stakes, paint, flags, or other suitable means) the horizontal route to within 24 inches from the outer edge of either side of the underground facility within 48 hours, excluding days other than business days, after the time the notification is received (s. 556.105(5), F.S.). Prior to or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator must stop excavation or demolition activities in the vicinity of the facility and must notify the system to have the route remarked (s. 556.105(11), F.S.).

An excavator must avoid excavation in an area until each member operator's underground facility has been marked and located, the excavator has been notified that no member operator has underground facilities in that area, or for 48 hours (excluding days other than business days) after notification under the system, whichever occurs first (s. 556.105(6), F.S.). If a member operator has not located and marked its underground facilities within 48 hours (excluding days other than business days) after notification under the system, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not demolish in an area until all member operator underground facilities have been marked and located, or removed.

A member operator which certifies that it does not have accurate information concerning the exact location of its underground facilities is exempt from having to identify the horizontal route to within 24 inches from the outer edge of either side of the underground facility within 48 hours, excluding days other than business days, after the time the notification is received (s. 556.105(7), F.S.). However, the member operator must provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excavation or demolition is performed with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

If extraordinary circumstances exist, a member operator must notify the system of the member operator's inability to comply with this section (s. 556.105(8), F.S.).⁵ The system must notify "only those prospective excavators who make requests for notification after the member operator reported the member operator's inability to comply." (See s. 556.105(8)(a), F.S.) This requirement, however, could have multiple interpretations. For example, it is unclear whether the system is required to provide notification to the excavators after receiving notification from the member or whether the system will only notify excavators who contact the system after the member operator reported its inability to comply with the act. This section further provides that the member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and must promptly notify the system when the extraordinary circumstances cease to exist. During the period when extraordinary circumstances

⁵ For the purposes of this section, the term "extraordinary circumstances" is defined to mean circumstances other than normal operating conditions which exist and make it impractical for a member operator to comply with the provisions of this act.

exist, the system must remain available to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties.

If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage must immediately notify the member operator (s. 556.105(12), F.S.). Upon receiving notice, the member operator must send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator must cease excavation or demolition activities that may cause further damage to such underground facility.

Section 556.106, F.S., provides for the liability of the member operator, excavator, and system under the act. This section includes a provision that, in the event any person violates s. 556.105(1) or (6), F.S., and, subsequently, whether by himself or herself or through the person's 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. However, 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.

Section 556.107, F.S., provides for enforcement of the act by any local or state law enforcement officer or permitting agency inspector and establishes penalties for violations of the act. Section 556.108, F.S., provides certain exemptions to the notification requirements of s. 556.105(1), F.S. Section 556.109, F.S., states that the provisions of this act do not apply to making an excavation or demolition during an emergency, provided the system or the member operator was notified at the earliest opportunity and all reasonable precautions had been taken to protect any underground facility. Section 556.110, F.S., provides a method for charging member operators for system costs. Section 556.111, F.S., provides for the applicability of the act to existing law.

Workshops Relating to the Underground Facility Damage Prevention and Safety Act⁶

After conducting a series of workshops throughout the state in the summer of 2001, the board of directors of Sunshine State One-Call of Florida, Inc., approved proposed changes to the Underground Facility Damage Prevention and Safety Act. These proposed changes, on which this committee substitute is based, would incorporate best-practice suggestions from the U.S. Department of Transportation pertaining to one-call systems and underground facility damage prevention. The changes would also update the act to account for new industry technologies and lessons learned as a result of act implementation during the past several years.

⁶ Material in this subsection of the analysis is based on information provided by staff of Sunshine State One-Call of Florida, Inc., March 2002.

III. Effect of Proposed Changes:

This committee substitute substantially revises ch. 556, F.S., the Underground Facility Damage Prevention and Safety Act (act). The following is a section-by-section analysis of this committee substitute:

Section 1 amends s. 556.101, F.S., which sets forth the legislative intent of the act. Subsection (2) is amended to replace the term “single toll-free telephone number” with the term “access” in order to take into account other forms of communication such as facsimile transmission and e-mail. Paragraph (c) of subsection (3) is amended to provide legislative intent regarding other potential sources of funding for administration of the act, including charges for services performed by the system, such as record searches, damage prevention, and educational activities. Paragraphs (d) and (e) are added to subsection (3) to provide that the state reserves the power to regulate any subject matter specifically addressed in the act and to provide legislative intent regarding the allowing of local officers and inspectors to enforce the act without the need to incorporate the act into local codes or ordinances.

Additionally, certain language currently in s. 556.101(3), F.S., is redesignated as a new subsection (4) and is amended to provide that it is not the purpose of the act to create liability or negligence on the part of any small municipality operator (instead of any municipality or county operator, as under current law) of an underground facility which has elected, under s. 556.103, F.S., not to participate in the notification system until January 1, 2003. Thus, this amendment conforms the legislative intent to the provisions in s. 556.103, F.S. A new subsection (5) is also added to provide that it is not the purpose of the act to amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.

Section 2 amends s. 556.102, F.S., to modify, and add, several definitions used in the act, including:

- The term “business hours” is expanded to include any hour during which the system is open for business. This change is meant to take into account other means of notification that do not require the presence of a telephone operator.
- The term “design services” is added to mean services that may be provided by a member operator to a design engineer, architect, surveyor, or planner, (upon payment of a fee to the member operator) if the presence of underground facilities is known to the member operator, which services may be based on certain specified information.
- The terms “excavate” and “excavation” are expanded to include operations performed on land beneath the waters of the state and to provide for new forms of excavation, such as pipe bursting, directional drilling and boring, and other trenchless technologies. It should be noted, however, that current law attempts to define the verb “excavate” as a noun, thus potentially limiting the precision with which the term can be applied.
- The term “member operator” is amended to conform it to provisions regarding the option of certain small municipalities to elect not to participate in the system until January 1, 2003, as provided under s. 556.103, F.S.

- The term “positive response” is added to mean communications among excavators, member operators, and the system concerning the status of locating an underground facility.
- The term “premark” is added to mean the act of delineating the general scope of an excavation on the ground using white paint, white stakes, or other similar white markings.
- The term “tolerance zone” is added to mean a 24-inch area from the outer edge of either side of the exterior surface of a marked underground facility.
- The term “system” is amended to replace the phrase “one-call toll-free telephone” with the term “free-access” in order to take into account other methods of communication with the system, such as facsimile transmission and e-mail.

Section 3 amends s. 556.104, F.S., to make conforming changes to the description of the notification system in order to take into account other forms of access to the system and to specify that the system may provide additional modes of access (*i.e.*, other than the required toll-free telephone number) at no cost to the user.

Section 4 amends s. 556.105, F.S., relating to procedures under the act. Changes to the section include:

- Paragraph (a) of subsection (1) is amended to clarify that pre-excavation or pre-demolition notice provided by excavators through the system is measured in “full” business days.
- Paragraph (a) is added to subsection (4) to provide that when an excavator cannot provide specific information regarding the location where the excavation or demolition work is going to be performed, and when the excavator and member operator have not agreed otherwise, the excavator is required to premark the proposed area prior to the member operator identifying the horizontal route of its underground facilities. However, premarking, in such instance, is not required for an excavation that is more than 500 feet in length or where such premarking could interfere with traffic or pedestrians.
- Subsection (5) is redesignated as paragraph (b) of subsection (4), and a new paragraph (c) is created under subsection (4). Paragraphs (b) and (c) provide different marking schedules for underground facilities depending on whether they are under land or beneath the waters of the state. Facilities under land must be marked within two full business days after notification of a member operator. Facilities beneath water must be marked with buoys or other suitable devices within 10 business days after notification of a member operator.
- Paragraph (d) is created under subsection (4) to provide that, when excavation is to take place within a tolerance zone, an excavator must use increased caution (including hand-digging, pot-holing, soft-digging, vacuum-excavation methods, or other similar procedures) to protect underground facilities. Any use of mechanized equipment within the tolerance zone must be supervised by the excavator.
- Paragraph (a) of subsection (6) is redesignated as paragraph (a) of subsection (5) and is amended to make conforming changes.

- Subsection (7) is redesignated as paragraph (a) of subsection (6) and is amended to make conforming changes. Paragraph (b) is added to that subsection to provide that a member operator that states that it does not have accurate information concerning the exact location of its underground facilities is not exempt, as provided for in this subsection, from giving such information to an excavator when the underground facilities have not been taken out of service and they can be located using available designating technologies.
- Paragraphs (a) and (b) of subsection (8) are redesignated as paragraphs (a) and (b) of subsection (7) and are amended to clarify the system's notification obligations when extraordinary circumstances exist. The committee substitute provides that after the system has received notification of a member operator's inability to comply, the system shall make the information known to excavators who subsequently notify the system of their intent to excavate. The committee substitute also clarifies that the system shall remain available to provide information during business hours, unless the system itself has been adversely affected by extraordinary circumstances.
- Subsection (9) is redesignated as paragraph (a) of subsection (8) and is amended to make conforming changes. A new paragraph (b) is also added to subsection (8) to require the system to implement procedures for positive response by January 1, 2004.

Section 5 amends s. 556.106, F.S., regarding liability. If an underground facility operator fails to become a member of Sunshine State One-Call of Florida, Inc., as required by the act, and that failure is a cause of damage to its underground facilities resulting from damage caused by an excavator who has complied with the provisions of the act and who has used reasonable care when excavating, the underground facility operator has no right of recovery against the excavator.

Section 6 amends subsection (1) of s. 556.107, F.S., to provide for citations to member operators who fail to mark their facilities as required by s. 556.105, F.S. The committee substitute also provides that citations may be issued to any employee of an excavator or member operator who is involved in a noncriminal infraction. Subsection (2) of s. 556.107, F.S., is amended to clarify that the removal of certain "valid" stakes or physical markings constitutes a second-degree misdemeanor. The committee substitute clarifies that stakes and markings remain valid for 20 calendar days after information is provided to the system under s. 556.105(1)(c), F.S.

Section 7 creates s. 556.112, F.S., relating to the provision of design services by member operators to design engineers, architects, surveyors, and planners. The committee substitute requires each member operator to provide to the system annually, and thereafter keep current, contact information of individuals who may be contacted for the purpose of responding to requests to provide design services. Each member is mandated to provide to the system annually, and thereafter keep current, a list of fees for each type of service. The committee substitute requires a member operator, within 20 business days after receiving such a fee, to either respond to a request for design services, if the member operator chooses to provide the requested services, or notify the requesting party that the services will not be provided. The committee substitute also directs the system to study the feasibility of implementing a procedure for notifying member operators of requests for design services and to report the results of the study to the Legislature before January 1, 2004.

The committee substitute provides that this section shall not apply to state agencies, municipalities, or counties (or contractors, consultants, agents, persons, or firms acting under the authority of such entities) regarding work in the entities' rights-of-way. The committee substitute further provides that this section shall not limit or expand any existing law governing the process a state agency, municipality, or county uses to request design services from member operators or the responsibility for providing or paying for such services.

Section 8 provides that the act takes effect October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute substantially amends ch. 556, F.S., (the Underground Facility Damage Prevention and Safety Act) relating to the interactions between the owners of underground facilities and individuals whose excavations could potentially damage such facilities.

C. Government Sector Impact:

This committee substitute provides legislative intent stating that the state reserves the power to regulate any subject matter specifically addressed in the Underground Facility Damage Prevention and Safety Act and that local officers and inspectors are permitted to enforce the act without the need to incorporate the act into local codes or ordinances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
