

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

REVISED: _____

DATE: March 6, 2002

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

I. Summary:

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act.” The act is designed to prevent injury to persons and property resulting from damage to underground facilities caused by excavation or demolition operations. The act provides for a single toll-free telephone number for excavation contractors and the public to call for notification of their intent to engage in excavation or demolition. This notification system allows operators of underground facilities that provide water, sewage, electric, gas, communications, and other services an opportunity to locate and identify their facilities. The act creates a non-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCF), to administer the notification system. Underground facility operators are required to be members of SSOCF pursuant to s. 556.103, F.S. SSOCF administers the provisions of the act through a board of directors, and revenues are generated through assessed contributions from the member operators. Cities with populations of 10,000 or less are not required to participate in the system until January 1, 2003.

The Committee Substitute for Senate Bill 2084 substantially revises ch. 556, F.S. The committee substitute expands free access to the notification system to take into account other forms of technology, including facsimile transmissions and e-mail. The committee substitute provides for additional sources of system funding, reserves to the state the power to regulate any subject matter under the act, authorizes local code enforcement officers to enforce the act without adopting local codes and ordinances, and clarifies membership requirements. The committee substitute revises certain definitions, creates new definitions, and revises procedures for excavation and notification. The committee substitute also revises liability provisions for non-criminal and criminal offenses. Finally, the committee substitute prescribes certain requirements regarding design services to be provided by member operators to design 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 of the Florida Statutes.

II. Present Situation:

Chapter 556, F.S., provides for a single toll-free telephone number for excavation contractors and the public to call for notification of their intent to engage in excavation or demolition. The act creates the SSOFC to administer the notification system. Underground facility operators are required to be members of SSOFC pursuant to s. 556.103, F.S. The SSOFC administers the provisions of the act through a board of directors, and revenues are generated through assessed contributions from the member operators. Cities with populations of 10,000 or less are not required to participate in the system until January 1, 2003.

System procedures are set forth in s. 556.105, F.S. Excavators are required to provide notification using the toll-free telephone number not less than two or more than five business days prior to excavation or demolition. Excavators must provide information including, in part, the following: name and telephone number of the excavator's representative, location where the work will be performed and construction limits of the excavation, commencement date and duration of the work, whether machinery will be used, and depth of the work. The excavator is provided the names of the member operators who will be advised of the notification, and the member operators within the excavation area are promptly notified through the system.

Member operators are required within 48 hours of notification, excluding days other than business days, to mark any affected underground facilities using stakes, paint, flags, or other suitable means within 24 inches of the outer edge of either side of the facilities. Member operators who cannot respond within 48 hours are required to contact the excavator and negotiate a new schedule. Excavators may not commence work until each member's facility has been located and marked, the excavator has been informed there are no affected facilities in the area, or 48 hours, whichever occurs first. If a member operator has not located and marked its facilities within 48 hours, work may commence, provided that the excavator exercises reasonable care, and provided that detection equipment or other acceptable means of locating the facilities is used. If a member operator certifies that it does not have accurate information regarding the exact location of its facilities, it is exempt from the requirements set forth above, but is required to provide the best available information to the excavator. In that case, an excavator is not liable for any damage to the member operator's facilities, provided that excavation is performed with reasonable care, and provided that detection equipment or other acceptable means of locating the facilities is used.

If extraordinary circumstances exist, the member operator is required to notify the system of the member's inability to comply with the requirements set forth above. The term "extraordinary circumstance" means circumstances other than normal operating conditions that make it impractical for a member to comply with the act. In such case, the system is required to notify "only those prospective excavators who make requests for notification after the member operator reported its inability to comply." *See* s. 556.105(8)(a), F.S. This requirement, as currently worded, is confusing. 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. As discussed later, the committee substitute clarifies this point.

Once excavation begins, the excavator is required to cease operations if contact with, or damage to, any underground facility occurs. The excavator must immediately notify the member operator and may not resume any operation that may cause further damage.

Section 556.106, F.S., addresses liability for damage caused to underground facilities. In the event an excavator violates the requirements set forth in s.556.105, F.S., and subsequently performs an excavation or demolition that damages an underground facility, there is a rebuttable presumption that the excavator was negligent. If found liable, the excavator is liable for the total sum of the losses up to \$500,000.

Section 556.107, F.S., addresses violations of the act. Under s. 556.107(1), F.S., an excavator who violates s. 556.105, F.S., may be issued a citation with a penalty of \$250 by any local or state law enforcement or permitting agency inspector. Section 556.107(2), F.S., makes it a second-degree misdemeanor for anyone to knowingly and willfully remove or destroy stakes or other markers.

III. Effect of Proposed Changes:

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 “toll-free telephone number” with the term “access” to take into account other forms of communication such as facsimile transmission and e-mail. Paragraph (c) of subsection (3) is amended to provide for other sources of funding through services performed by the system, such as records searches, and damage prevention and educational activities. Paragraphs (d) and (e) are added to subsection (3) to reserve to the state the power to regulate any subject matter specifically addressed in the act, and to permit local officers and inspectors to enforce the act without the need to incorporate the act into local codes or ordinances.

Subsection (4) is created, which amends an already-existing provision of s. 556.101, F.S. The current law provides that it is not the purpose of the act to create liability or negligence on the part of any municipality or county operator of underground facilities which elects not to participate in the notification system. However, under s. 556.103, F.S., only municipalities with populations of 10,000 or less may elect to not participate in the system. Therefore, the committee substitute deletes the reference to “county” and makes other changes to conform to s. 556.103, F.S.

Subsection (5) is added, which provides 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 applicable definitions. The term “business hours” is expanded to include any hour during which the system is open for business. This 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 include services that may be performed by a member operator for an architect, design engineer or planner, prior to excavation.

The terms “excavate” and “excavation” are expanded to include operations performed beneath the waters of the state, and to address new forms of excavation, such as pipe bursting, directional drilling and boring, and other trenchless technologies.

The term “member operator” is amended to make conforming changes regarding small municipalities.

The term “positive response,” “premark,” and “tolerance zone” are added. “Positive response” refers to communications between excavators, member operators, and the system concerning the status of locating an underground facility. “Premark” clarifies that the appropriate method of premarking facilities, as required in Section 4 of the committee substitute, involves the use of white markings, including stakes and paint. “Tolerance zone” refers to a 24-inch area from the outer edge of either side of the exterior surface of a marked facility.

Section 3 amends s. 556.104, F.S., to make conforming changes that take into account other forms of access to the system and to specify that access is provided at no cost to the user.

Section 4 amends s. 556.105, F.S., to clarify that the notice provided by excavators 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 identifying the horizontal route of the facilities. However, premarking, in such instance, is not required beyond 500 feet in length.

Subsection (5) is redesignated as paragraph (b) of subsection (4), and paragraph (c) is created. Paragraphs (b) and (c) provide different marking schedules for facilities under land and beneath water. Facilities under land must be marked within two full business after notification. Facilities beneath water must be marked with buoys within 10 business days after notification.

Subsection (6)(a) of s. 556.105, F.S., is redesignated as subsection (5)(a) and makes conforming changes. Subsection (7) is redesignated as subsection (6)(a) and makes conforming changes. Paragraph (b) is added. The current law allows a member operator to provide the best available information to an excavator when the member does not have accurate information regarding the exact location of its facilities. Paragraph (b) provides that a member is not excused from providing accurate information when the underground facilities have not been taken out of service and they can be located using available designating technologies.

Subsection (8)(a) of s. 556.105, F.S., is redesignated as subsection (7)(a) and clarifies the system’s responsibility during extraordinary circumstances. 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) of s. 556.105, F.S., is redesignated as subsection (8)(a) and makes conforming changes, and paragraph (b) is added 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 SSOFC, 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 has used reasonable care, 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 by any employee of an excavator or member operator. Subsection (2) of s. 556.107, F.S., is amended to clarify that the removal of 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. The new section sets forth requirements for design services to assist 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 required to provide to the system annually, and thereafter keep current, a list of fees for each type of service. The committee substitute requires the member operator to provide design services within 20 days of receiving a fee, or to notify the requesting party that the service will not be provided. The committee substitute requires the system to conduct a feasibility study of implementing a notification procedure for design services, and to report its results to the Legislature before January 1, 2004. Finally, 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 their authority, regarding work in their rights-of-way. The committee substitute provides that nothing in this section affects existing laws governing the process of state agencies, municipalities, or counties regarding requests for design services from member operators or the responsibility for providing or paying for such services.

Section 9 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:

None.

C. Government Sector Impact:

The committee substitute reserves to the state the power to regulate any subject matter specifically addressed in the act. To the extent local codes or ordinances conflict with the act, the act will preempt such provisions.

Local law enforcement officers and permitting-agency inspectors will be able to enforce the act without the need of local government to incorporate the act into code or ordinance. Currently, ss. 162.21-162.23, F.S., authorize local officers to enforce local codes and ordinances only.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.