

By Senator Holzendorf

2-1029A-02

1 A bill to be entitled
2 An act relating to the Underground Facility
3 Damage Prevention and Safety Act; amending s.
4 556.101, F.S.; revising legislative intent;
5 amending s. 556.102, F.S.; redefining the terms
6 "business hours," "excavate," and "system";
7 defining the terms "design services," "positive
8 response," "premark," and "tolerance zone";
9 amending s. 556.104, F.S.; providing for a
10 free-access notification system; amending s.
11 556.105, F.S.; revising the procedures for
12 excavation and notification; amending s.
13 556.106, F.S.; revising liability provisions;
14 amending s. 556.107, F.S.; revising noncriminal
15 and criminal penalties; amending s. 556.110,
16 F.S.; providing conditions for assessing costs;
17 creating s. 556.112, F.S.; prescribing
18 requirements for member operators and requests
19 for design services; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 556.101, Florida Statutes, is
25 amended to read:
26 556.101 Short title; legislative intent.--
27 (1) This act may be cited as the "Underground Facility
28 Damage Prevention and Safety Act."
29 (2) It is the intent of the Legislature to provide
30 access a single toll-free telephone number for excavating
31 contractors and the ~~general~~ public to provide call for

1 notification to the system of their intent to engage in
2 excavation or demolition. This notification system shall
3 provide the member operators an opportunity to identify and
4 locate their underground facilities.

5 (3) It is the purpose of this act to:

6 (a) Aid the public by preventing injury to persons or
7 property and the interruption of services resulting from
8 damage to an underground facility caused by excavation or
9 demolition operations.

10 (b) Create a not-for-profit corporation comprised of
11 operators of underground facilities in this state to
12 administer the provisions of this act.

13 (c) Fund the cost of administration through ~~entirely~~
14 ~~and exclusively by assessed~~ contributions from the member
15 operators for services provided to the member operators and
16 from charges made to others for services requested and
17 provided, such as record searches, education or training, and
18 damage prevention activities.

19 (d) Reserve to the state the power to regulate any
20 subject matter specifically addressed in this act.

21 (e) Permit any local law enforcement officer or
22 permitting-agency inspector to enforce this act without the
23 need to incorporate the provisions of this act into any local
24 code or ordinance.

25 (4) It is not the purpose of this act to create
26 liability for negligence on the part of any small municipality
27 ~~or county~~ operator of an underground facility which elects to
28 not participate in the one-call notification system in the
29 manner set forth in s. 556.103(1)~~created by this act.~~ This
30 subsection expires January 1, 2003.

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1 Section 2. Section 556.102, Florida Statutes, is
2 amended to read:

3 556.102 Definitions.--As used in this act:

4 (1) "Business days" means Monday through Friday,
5 excluding the following holidays: New Year's Day, Birthday of
6 Dr. Martin Luther King, Jr., Memorial Day, Independence Day,
7 Labor Day, Thanksgiving Day and the following Friday,
8 Christmas Eve, and Christmas Day. Any such holiday that falls
9 on a Saturday shall be observed on the preceding Friday. Any
10 such holiday that falls on a Sunday shall be observed on the
11 following Monday.

12 (2) "Business hours" means the hours of a day during
13 which the system is open for business ~~toll-free telephone~~
14 ~~number is answered by a natural person.~~

15 (3) "Damage" means any impact upon or contact with,
16 including, without limitation, penetrating, striking,
17 scraping, displacing, or denting, however slight, the
18 protective coating, housing, or other protective devices of
19 any underground facility, or the removal or weakening of any
20 lateral or vertical support from any underground facility, or
21 the severance, partial or complete, of any underground
22 facility.

23 (4) "Demolish" or "demolition" means any operation by
24 which a structure or mass of material is wrecked, razed,
25 rended, moved, or removed by means of any tool, equipment, or
26 discharge of explosives, or any disturbance of the earth in
27 any manner on public or private lands which could damage any
28 underground facility.

29 (5) "Design services" means services that may be
30 provided by a member operator to a design engineer, architect,
31 surveyor, or planner, if the presence of underground

1 facilities is known to a member operator, upon payment of a
2 fee to the member operator, which services may be based on:

3 (a) Information obtained solely from a review of
4 utility records.

5 (b) Information to augment utility records, such as
6 topographic surveying of above-ground utility features.

7 (c) Information obtained through the use of
8 designating technologies to obtain horizontal underground
9 facility locations.

10 (d) Information obtained from physically exposing
11 underground facilities.

12 (6)(5) "Excavate" or "excavation" means any manmade
13 cut, cavity, trench, or depression in the earth's surface,
14 formed by removal of earth, intended to change the grade or
15 level of land, or intended to penetrate or disturb the surface
16 of the earth, including land beneath the waters of the state,
17 as defined in s. 373.019(17), and the term includes pipe
18 bursting and directional drilling or boring from one point to
19 another point beneath the surface of the earth, or other
20 trenchless technologies.

21 (7)(6) "Excavator" or "excavating contractor" means
22 any person performing excavation or demolition operations.

23 (8)(7) "Member operator" means any person who
24 furnishes or transports materials or services by means of an
25 underground facility except a small municipality ~~or county~~
26 that has elected not to participate in the one-call
27 notification system in the manner set forth in s. 556.103(1).

28 (9)(8) "Person" means any individual, firm, joint
29 venture, partnership, corporation, association, municipality,
30 or other political subdivision, governmental unit, department,
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1 or agency, and includes any trustee, receiver, assignee, or
2 personal representative of a person.

3 (10) "Positive response" means the communications
4 among member operators, excavators, and the system concerning
5 the status of locating an underground facility.

6 (11) "Premark" means to delineate the general scope of
7 the excavation on the surface of the ground using white paint,
8 white stakes, or other similar white markings.

9 (12) "Tolerance zone" means 24 inches from the outer
10 edge of either side of the exterior surface of a marked
11 underground facility.

12 (13)~~(9)~~ "Underground facility" means any public or
13 private personal property which is buried, placed below
14 ground, or submerged on any member operator's right-of-way,
15 easement, or permitted use which is being used or will be used
16 in connection with the storage or conveyance of water; sewage;
17 electronic, telephonic, or telegraphic communication; electric
18 energy; oil; petroleum products; natural gas; optical signals;
19 or other substances, and includes, but is not limited to,
20 pipelines, pipes, sewers, conduits, cables, valves, and lines.
21 For purposes of this act, a liquefied petroleum gas line
22 regulated under chapter 527 is not an underground facility
23 unless such line is subject to the requirements of Title 49
24 C.F.R. adopted by the Department of Agriculture and Consumer
25 Services, provided there is no encroachment on any member
26 operator's right-of-way, easement, or permitted use. Petroleum
27 storage systems subject to regulation pursuant to chapter 376
28 are not considered underground facilities for the purposes of
29 this act unless the storage system is located on a member
30 operator's right-of-way or easement. Storm drainage systems
31 are not considered underground facilities.

1 ~~(14)(10)~~ "System" means a free-access ~~one-call~~
2 ~~toll-free telephone~~ notification system established by the
3 corporation as provided in this act.

4 Section 3. Section 556.104, Florida Statutes, is
5 amended to read:

6 556.104 Free-access ~~One-call~~ notification system.--The
7 corporation shall maintain a free-access ~~establish a one-call~~
8 ~~toll-free telephone~~ notification system ~~which shall be~~
9 ~~operational by June 1, 1994~~. Any person who furnishes or
10 transports materials or services by means of an underground
11 facility in this state shall participate as a member operator
12 of the system except that a small city as defined in s. 120.52
13 may elect not to participate in the system in the manner set
14 forth in s. 556.103(1). The purpose of the system is to
15 receive notification of planned excavation or demolition
16 activities and to notify member operators of such planned
17 excavation or demolition activities. The system shall provide
18 a single toll-free telephone number within this state which
19 excavators can use to notify member operators of planned
20 excavation or demolition activities, and the system may also
21 provide additional modes of access at no cost to the user.

22 Section 4. Section 556.105, Florida Statutes, is
23 amended to read:

24 556.105 Procedures.--

25 (1)(a) Not less than 2 nor more than 5 full business
26 days before beginning any excavation or demolition, an
27 excavator shall provide the following information through the
28 system:

29 1. The name of the individual who provided
30 notification and the name, address, including the street
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1 address, city, state, zip code, and telephone number of her or
2 his employer.

3 2. The name and telephone number of the representative
4 for the excavator.

5 3. The county, the city or closest city, and the
6 street address or the closest street, road, or intersection to
7 the location where the excavation or demolition is to be
8 performed, and the construction limits of the excavation or
9 demolition.

10 4. The commencement date and anticipated duration of
11 the excavation or demolition.

12 5. Whether machinery will be used for the excavation
13 or demolition.

14 6. The person or entity for whom the work is to be
15 done.

16 7. The type of work to be done.

17 8. The approximate depth of the excavation.

18 (b) The excavator shall provide such information by
19 notifying the system through its free-access notification
20 system ~~calling the statewide toll-free number~~ during business
21 hours, as determined by the corporation, or by such other
22 method as authorized by the corporation. Any notification
23 received by the system at any time other than during business
24 hours shall be considered to be received at the beginning of
25 the next business day.

26 (c) Information provided by an excavator shall be
27 considered valid for a period of 20 calendar days after each
28 date such information is provided to the system. In computing
29 the period for which information furnished is considered
30 valid, the date the notice is provided shall not be counted,
31 but the last day of such period shall be counted unless it is

1 a Saturday, Sunday, or a legal holiday, in which event, the
2 period shall run until the end of the next day which is not a
3 Saturday, Sunday, or a legal holiday.

4 (2) Each notification by means of the system shall be
5 recorded to document compliance with this act. Such record
6 may be made by means of electronic, mechanical, or any other
7 method of all incoming and outgoing wire and oral
8 communications concerning location requests in compliance with
9 chapter 934. Such records shall be kept for a period of 5
10 years and, upon written request, shall be available to the
11 excavator making the request, the member operator intended to
12 receive the request, and their agents. However, custody of the
13 records shall not be transferred from the system except under
14 subpoena.

15 (3) The system shall provide the person who provided
16 notification with the names of the member operators who will
17 be advised of the notification and a notification number which
18 specifies the date and time of the notification.

19 (4) All member operators within the defined area of a
20 proposed excavation or demolition shall be promptly notified
21 through the system, except that member operators with
22 state-owned underground facilities located within the
23 right-of-way of a state highway need not be notified of
24 excavation or demolition activities and are under no
25 obligation to mark or locate such facilities.

26 (a) When an excavation site cannot be described in
27 information provided under subparagraph (1)(a)3. with
28 sufficient particularity to enable the member operator to
29 ascertain the excavation site, and if the excavator and member
30 operator have not mutually agreed otherwise, the excavator
31 shall premark the proposed area of the excavation before a

1 member operator is required to identify the horizontal route
2 of its underground facilities in the proximity of any
3 excavation. However, premarking is not required for any
4 excavation that is over 500 feet in length and is not required
5 where the premarking could reasonably interfere with traffic
6 or pedestrian control.

7 (b)(5) If a member operator determines that a proposed
8 excavation or demolition is in proximity to or in conflict
9 with an underground facility of the member operator, except a
10 facility beneath the waters of the state, which is governed by
11 paragraph (c), the member operator shall identify the
12 horizontal route by marking to within 24 inches from the outer
13 edge of either side of the underground facility by the use of
14 stakes, paint, flags, or other suitable means within 2 full ~~48~~
15 ~~hours, excluding days other than~~ business days, after the time
16 the notification is received under subsection (1). If the
17 member operator is unable to respond within such time, the
18 member operator shall communicate with the person making the
19 request and negotiate a new schedule and time that is
20 agreeable to, and should not unreasonably delay, the
21 excavator.

22 (c) If a member operator determines that a proposed
23 excavation is in proximity to or in conflict with an
24 underground facility of the member operator beneath the waters
25 of the state, the member operator shall identify the estimated
26 horizontal route of the underground facility, within 10
27 business days, using marking buoys or other suitable devices,
28 unless directed otherwise by an agency having jurisdiction
29 over the waters of the state under which the member operator's
30 underground facility is located.

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1 (d) When excavation is to take place within a
2 tolerance zone, an excavator shall use increased caution to
3 protect underground facilities. The protection requires hand
4 digging, pot holing, soft digging, vacuum excavation methods,
5 or other similar procedures to identify underground
6 facilities. Any use of mechanized equipment within the
7 tolerance zone must be supervised by the excavator.

8 (5)(6)(a) An excavator shall avoid excavation in the
9 area described in the notice given pursuant to subsection (1)
10 until each member operator underground facility has been
11 marked and located or until the excavator has been notified
12 that no member operator has underground facilities in the area
13 described in the notice, or for the time allowed for markings
14 set forth in paragraphs (4)(b) and (c)48 hours, excluding
15 days other than business days, after notification under the
16 system, whichever occurs first. If a member operator has not
17 located and marked its underground facilities within the time
18 allowed for marking set forth in paragraphs (4)(b) and (c)48
19 hours, excluding days other than business days, after
20 notification under the system, the excavator may proceed with
21 the excavation, provided the excavator does so with reasonable
22 care, and provided, further, that detection equipment or other
23 acceptable means to locate underground facilities are used.

24 (b) An excavator shall not demolish in the area
25 described in the notice given pursuant to subsection (1) until
26 all member operator underground facilities have been marked
27 and located, or removed.

28 (6)(a)(7) A member operator that states which
29 certifies that it does not have accurate information
30 concerning the exact location of its underground facilities is
31 exempt from the requirements of paragraphs (4)(b) and (c)

1 ~~subsection (5)~~, but shall provide the best available
2 information to the excavator in order to comply with the
3 requirements of this section. An excavator is not liable for
4 any damage to an underground facility under the exemption in
5 this subsection if the excavation or demolition is performed
6 with reasonable care and detection equipment or other
7 acceptable means to locate underground facilities are used.

8 (b) A member operator may not exercise the exemption
9 provided by this subsection if the member operator has
10 underground facilities that have not been taken out of service
11 and that are locatable using detection equipment to locate
12 underground facilities.

13 (7)(8)(a) If extraordinary circumstances exist, a
14 member operator shall notify the system of the member
15 operator's inability to comply with this section. For the
16 purposes of this section, "extraordinary circumstances" means
17 circumstances other than normal operating conditions which
18 exist and make it impractical for a member operator to comply
19 with the provisions of this act. After the system has
20 received notification of a member operator's inability to
21 comply, the system shall make that information known to
22 excavators who subsequently notify the system of an intent to
23 excavate.~~The system shall notify only those prospective~~
24 ~~excavators who make requests for notification after the member~~
25 ~~operator reported the member operator's inability to comply.~~
26 The member operator is relieved of responsibility for
27 compliance under the law during the period that the
28 extraordinary circumstances exist and shall promptly notify
29 the system when the extraordinary circumstances cease to
30 exist.

1 (b) During the period when ~~that~~ extraordinary
2 circumstances exist, the system shall remain available during
3 business hours to provide information to governmental
4 agencies, member operators affected by the extraordinary
5 circumstances, and member operators who can provide relief to
6 the affected parties, unless the system itself has been
7 adversely affected by extraordinary circumstances.

8 ~~(8)(a)(9)~~ If a member operator determines that the
9 excavation or demolition is not near an existing underground
10 facility of the member operator, the member operator shall
11 notify the excavator within 2 full ~~48 hours, excluding days~~
12 ~~other than~~ business days, from the time of the notification to
13 the system that no conflict exists and that the excavation or
14 demolition area is clear. An excavator who has knowledge of
15 the existence of an underground facility of a member operator
16 in the area is responsible for contacting the member operator
17 if a facility is not marked.

18 **(b) The system shall implement procedures for positive**
19 **response by January 1, 2004.**

20 ~~(9)(10)~~ A member operator shall use the recommended
21 guidelines for uniform temporary marking of underground
22 facilities as approved by the Utility Location and
23 Coordinating Council of the American Public Works Association
24 when marking the horizontal route of any underground facility
25 of the operator.

26 ~~(10)(11)~~ Prior to or during excavation or demolition,
27 if the marking of the horizontal route of any facility is
28 removed or is no longer visible, the excavator shall stop
29 excavation or demolition activities in the vicinity of the
30 facility and shall notify the system to have the route
31 remarked.

1 (11)~~(12)~~ If any contact with or damage to any pipe,
2 cable, or its protective covering, or any other underground
3 facility occurs, the excavator causing the contact or damage
4 shall immediately notify the member operator. Upon receiving
5 notice, the member operator shall send personnel to the
6 location as soon as possible to effect temporary or permanent
7 repair of the contact or damage. Until such time as the
8 contact or damage has been repaired, the excavator shall cease
9 excavation or demolition activities that may cause further
10 damage to such underground facility.

11 Section 5. Paragraph (a) of subsection (2) of section
12 556.106, Florida Statutes, is amended, present subsections (4)
13 and (5) of that section are redesignated as subsections (5)
14 and (6), respectively, and a new subsection (4) is added to
15 that section, to read:

16 556.106 Liability of the member operator, excavator,
17 and system.--

18 (2)(a) In the event any person violates s. 556.105(1)
19 or(5)~~(6)~~, and subsequently, whether by himself or herself or
20 through the person's employees, contractors, subcontractors,
21 or agents, performs an excavation or demolition which damages
22 an underground facility of a member operator, it shall be
23 rebuttably presumed that such person was negligent. Such
24 person, if found liable, shall be liable for the total sum of
25 the losses to all member operators involved as those costs are
26 normally computed. Any damage for loss of revenue and loss of
27 use shall not exceed \$500,000 per affected underground
28 facility, except that revenues lost by a governmental member
29 operator, which revenues are used to support payments on
30 principal and interest on bonds, shall not be limited. Any
31 liability of the state and its agencies and its subdivisions

1 which arises out of this chapter shall be subject to the
2 provisions of s. 768.28.

3 (4) If an owner of an underground facility fails to
4 become a member of the corporation in order to use and
5 participate in the system, as required by this act, and that
6 failure is a cause of damage to that underground facility
7 caused by an excavator who has complied with the provisions of
8 this act and has exercised reasonable care in the performance
9 of the excavation that has caused damage to the underground
10 facility, the owner has no right of recovery against the
11 excavator for the damage to that underground facility.

12 Section 6. Section 556.107, Florida Statutes, is
13 amended to read:

14 556.107 Violations.--

15 (1) NONCRIMINAL INFRACTIONS.--

16 (a) Violations of the following provisions are
17 noncriminal infractions:

18 1. Section 556.105(1), relating to providing required
19 information.

20 2. Section 556.105(5)~~556.105(6)~~, relating to the
21 avoidance of excavation.

22 3. Section 556.105(10)~~556.105(11)~~, relating to the
23 need to stop excavation or demolition.

24 4. Section 556.105(11)~~556.105(12)~~, relating to the
25 need to cease excavation or demolition activities.

26 5. Section 556.105(4)(b) and (c) relating to
27 identification of underground facilities, if a member operator
28 does not mark an underground facility, but not if a member
29 operator marks an underground facility incorrectly.

30 (b) Any excavator or member operator who commits a
31 noncriminal infraction under paragraph (a) may be issued a

1 citation by any local or state law enforcement officer or
2 permitting agency inspector, and the issuer of a citation may
3 require any excavator to cease work on any excavation or not
4 start a proposed excavation until there has been compliance
5 with the provisions of this act. Citations may be issued to
6 any employee of the excavator or member operator who is
7 directly involved in the noncriminal infraction.

8 (c) Any excavator or member operator who commits a
9 noncriminal infraction under paragraph (a) may be required to
10 appear before the county court. The civil penalty for any
11 such infraction is \$250, except as otherwise provided in this
12 section. Any person who fails to appear or otherwise properly
13 respond to a citation issued pursuant to paragraph (d) shall,
14 in addition to the citation, be charged with the offense of
15 failing to respond to such citation and, upon conviction, be
16 guilty of a misdemeanor of the second degree, punishable as
17 provided in s. 775.082 or s. 775.083. A written warning to
18 this effect shall be provided at the time any citation is
19 issued pursuant to paragraph (b).

20 (d) Any person cited for an infraction under paragraph
21 (a), unless required to appear before the county court, may:

22 1. Post a bond, which shall be equal in amount to the
23 applicable civil penalty; or

24 2. Sign and accept a citation indicating a promise to
25 appear before the county court.

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27 The issuing officer may indicate on the citation the time and
28 location of the scheduled hearing and shall indicate the
29 applicable civil penalty.
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1 (e) Any person charged with a noncriminal infraction
2 under paragraph (a), unless required to appear before the
3 county court, may:

4 1. Pay the civil penalty, in lieu of appearance,
5 either by mail or in person, within 10 days after the date of
6 receiving the citation; or

7 2. Forfeit bond, if a bond has been posted, by not
8 appearing at the designated time and location.

9
10 If the person cited follows either of the above procedures,
11 she or he shall be deemed to have admitted to committing the
12 infraction and to have waived the right to a hearing on the
13 issue of commission of the infraction. Such admission may be
14 used as evidence in any other proceeding under this act.

15 (f) Any person electing to appear before the county
16 court or who is required to appear shall be deemed to have
17 waived the limitations on the civil penalty specified in
18 paragraph (c). The court, after a hearing, shall make a
19 determination as to whether an infraction has been committed.
20 If the commission of an infraction has been proven, the court
21 may impose a civil penalty not to exceed \$5,000. In
22 determining the amount of the civil penalty, the court may
23 consider previous noncriminal infractions committed.

24 (g) At a hearing under this chapter, the commission of
25 a charged infraction must be proven by a preponderance of the
26 evidence.

27 (h) If a person is found by the hearing official to
28 have committed an infraction, such person may appeal that
29 finding to the circuit court.

30 (2) MISDEMEANORS.--Any person who knowingly and
31 willfully removes or otherwise destroys the valid stakes or

1 other valid physical markings described in s. 556.105(4)(b)
2 and (c)used to mark the horizontal route of an underground
3 facility commits a misdemeanor of the second degree,
4 punishable as provided in s. 775.082 or s. 775.083. For
5 purposes of this subsection, stakes or other nonpermanent
6 physical markings are considered valid for 20 calendar days
7 after information is provided to the system under s.
8 556.105(1)(c).

9 Section 7. Section 556.110, Florida Statutes, is
10 amended to read:

11 556.110 Costs assessed among member operators.--Member
12 operators shall proportionately share in the cost of operating
13 the system through monthly assessments made upon each member
14 operator. If assessments are made on a per-notification basis
15 ~~However~~, any member that receives fewer than 10 notifications
16 in any month shall not be assessed for such month.

17 Section 8. Section 556.112, Florida Statutes, is
18 created to read:

19 556.112 Design services.--

20 (1) Each member operator shall provide to the system
21 annually, and shall thereafter keep current, the contact names
22 and telephone numbers of individuals who may be contacted by
23 design engineers, architects, surveyors, and planners for the
24 purpose of responding to requests for design services.

25 (2) Each member operator shall provide to the system
26 annually, and shall thereafter keep current, a list of fees
27 applicable to each type of design services that each member
28 operator chooses to offer to design engineers, architects,
29 surveyors, and planners. This subsection does not affect any
30 requirement under s. 337.403(1) for a member operator to incur

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1 the expense for design services for utility relocations of the
2 type referenced in s. 337.403(1).

3 (3) Each member operator, within 20 business days
4 after receipt of the fee provided for in subsection (2), shall
5 either respond to a request for design services, if the member
6 operator chooses to provide the services requested, or shall
7 notify the party requesting services that the services will
8 not be provided.

9 (4) The system shall study the feasibility of
10 implementing a procedure for notification to member operators
11 of requests for design services from design engineers,
12 architects, surveyors, and planners, including the right to
13 recover reasonable and compensatory costs from the users, and
14 the system shall report the results of the study to the
15 Legislature before January 1, 2004.

16 Section 9. This act shall take effect October 1, 2002.

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19 SENATE SUMMARY

20 Defines new terms and redefines existing terms in the
21 Underground Facility Damage Prevention and Safety Act.
22 Provides for a free-access notification system. Revises
23 the procedures for excavation and notification. Revises
24 penalties. Provides requirements for member operators and
25 design services.
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