

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.)

Prepared By: Community Affairs Committee

BILL: CS/CS/CS/SB 1394

INTRODUCER: Community Affairs Committee, Regulated Industries Committee, Communications and Public Utilities Committee and Senator Miller

SUBJECT: Underground Facilities/Safety

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Tomkiewicz</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) implements the following provisions:

- Creates a “positive-response” process to facilitate a positive-response communication between member operators and excavators.
- Deletes a requirement that a notice of proposed excavation or demolition be made not more than 5 full business days prior to beginning the excavation or demolition.
- Extends the period for validity of the information in the notice from the current 20 calendar days to 30 calendar days.
- Deletes the current obsolete provision that a small city may elect not to participate in the One-Call system until January 1, 2003.
- Provides that Sunshine State One-Call is neither required nor permitted to locate or mark underground facilities, that a right of recovery does not exist against the system for failing to mark or locate underground facilities, and that the system is not liable for the failure of a member operator to comply with the requirements of the Act.
- Provides for exemptions from the Act.
- Directs the One-Call system to study the feasibility of designated zones where no notification is required and report the findings of the study.
- Provides for payment of court costs and allocation of civil penalties.

This CS substantially amends the following sections of the Florida Statutes: 556.101, 556.102, 556.103, 556.104, 556.105, 556.106, 556.107, 556.108, and 556.111.

II. Present Situation:

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act.” The goal of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the intended activities to allow the member operators an opportunity to identify and locate their nearby underground facilities.

The not-for-profit corporation is Sunshine State One-Call of Florida, Inc., which operates the notice system through its board of directors. The system is required to provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities. The person intending to conduct excavation or demolition must notify the system not less than 2 nor more than 5 full business days before beginning the operations. The person must also provide specified identification, location, and operational information. Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.² Within 2 full business days after the time the notification is received by the system, potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and should not unreasonably delay excavation or demolition. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator is to identify the horizontal route of the facility in a specified manner. If a member operator determines that a proposed excavation or demolition is not near an existing underground facility, it is to notify the excavator within 2 full business days that no conflict exists and the excavation or demolition area is clear. An excavator who has knowledge of an underground facility in the area is responsible for contacting the member operator if the facility is not marked.

An excavator is required to delay excavations until: (1) each member operator underground facility has been marked and located, (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice, or (3) expiration of the time allowed for markings, whichever occurs first. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may

¹ “Underground facility” means any public or private personal property 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. s. 556.102(13), F.S.

² The statutes require that 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, with the one exception that a small city may elect not to participate in the system until January 1, 2003, an exception that the bill repeals.

proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not demolish until all member operator underground facilities have been marked and located.

The Act provides for civil liability for violations and for enforcement by citation for noncriminal infractions with the citation to be given by any local or state law enforcement officer or permitting agency inspector.

Member operators share proportionately in the cost of the system through monthly assessments.

Section 142.01, F.S., requires that each clerk of the circuit court in each county of this state establish a separate fund to be known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions. The fund consists of deposits from specified fines, penalties, civil penalties, court costs, and proceeds from forfeited or unclaimed moneys, and includes “all other revenues received by the clerk as revenue authorized by law to be retained by the clerk.” Section 142.03, F.S., provides for disposition of these funds, providing that money from fines, forfeitures, and civil penalties collected in cases involving violations of municipal ordinances or of state traffic laws committed within a municipality are to be paid in full each month to the appropriate municipality.

III. Effect of Proposed Changes:

Section 1 amends s. 556.101, F.S., to provide that Sunshine State One-Call is neither required nor permitted to locate or mark underground facilities. Also, in connection with enforcement authority, the term “permitting agency inspector” is changed to “local government code inspector, or code enforcement officer.” Finally, the CS provides that one of the purposes of the Act is to foster awareness of federal laws and regulations that promote safety with respect to underground facilities.

Current law requires that each operator of an underground facility be a member of and participate in the system, but provides an exception stating that a small city may elect not to participate until January 1, 2003. The CS deletes this exemption language in several sections, including ss. 556.102, 556.103, 556.104, and 556.106(2)(e), F.S. (sections 2, 3, 4, and 6 of the CS)

Section 5 of the CS amends s. 556.105, F.S., the procedures section of the Act, as follows:

- Currently, an excavator must notify the system of proposed excavation or demolition not less than 2 nor more than 5 full business days prior to commencing the planned activities. The CS deletes the not more than 5 day language. This would delete an implied requirement that excavation or demolition begin within 5 days of notice.
- The CS adds to the list of information that must be provided in the notice, requiring provision of a valid electronic address, if available.
- Currently, the information provided in the notice is valid for a period of 20 calendar days. The CS changes this to 30 calendar days.

- The CS requires that an excavator provide the notification number to any law enforcement officer, government code inspector, or code enforcement officer upon request.
- Currently, if a member operator determines that a proposed excavation or demolition area is clear of underground facilities, it is to notify the excavator of this determination within 2 full business days. However, if an excavator has knowledge of an underground facility in the area, it is responsible for contacting the member operator if the facility is not marked. The CS replaces this with a “positive-response”³ process. The system is required to establish and maintain a process to facilitate a positive-response communication between member operators and excavators. After receiving notification from the system of a proposed excavation or demolition, a member operator must provide a positive response to the system within 2 full business days, or 10 such days for an underwater excavation, indicating the status of operations to protect the facility. The system is exempt from any requirement to initiate a positive response to an excavator when the excavator does not provide a valid electronic address to facilitate a positive response by the system. An excavator shall verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system.
- The CS changes the designated guidelines for temporary location markings.
- The CS directs the One-Call system to study the feasibility of the establishment of zones for the purpose of allowing excavation within such zones to be undertaken without notice to the system under specified circumstances. The One-Call system is required to report the findings of the study and resulting recommendations by February 1, 2007.

Section 6 amends s. 566.106, F.S., to reiterate that the system does not have a duty to mark or locate underground facilities and may not do so, to provide that a right of recovery does not exist against the system for failing to mark or locate underground facilities and that the system is not liable for the failure of a member operator to comply with the requirements of the Act, and to make technical changes.

Section 7 amends s. 556.107, F.S. This section currently provides that any excavator or member operator who commits a noncriminal infraction may be issued a citation. The CS requires that a citation be hand-delivered to an employee of the excavator or member operator who is involved in the infraction, and that the citation be issued in the name of the excavator or member operator, whichever is applicable. The CS also amends the civil penalty provisions of this section, which currently provide that a person cited for an infraction may be required to appear before the county court, and may be required to pay a civil penalty of \$250. The CS allows a person cited for a violation to pay within 30 days instead of the current 10 days. It also adds to the civil penalty payment of court costs. It also provides for allocation of the civil penalty. If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the local governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition to other court

³ The term “positive response” is defined as the communications among member operators, excavators, and the system concerning the status of locating an underground facility.

costs. If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund established by s. 142.01, F.S. The CS also allows Sunshine State One-Call to retain, at its own cost, an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation. The corporation may also appear in any case appealed to the circuit court if a county court finds that an infraction was committed. An appellant in the circuit court proceeding must timely notify the corporation of any appeal.

Section 8 amends s. 556.108, F.S., which provides for exemptions from the Act. Currently the section exempts any excavation or demolition performed by the owner of single-family residential property when it is made entirely on that land and is only up to a depth of 10 inches. The CS excludes from this exemption any property that is subdivided or is to be subdivided into more than one single-family residential property. The CS also adds to the current list of exemptions any excavation of 18 inches or less done:

- for services performed by a pest control licensee under chapter 482, F.S., if mechanized equipment is not used, or
- for the purpose of locating, repairing, connecting, adjusting, or routine maintenance of a private or public utility facility by an excavator, if the excavator is performing the work for the current or future owner of the underground facility and if mechanized equipment is not used.

Section 9 amends s. 556.111(3), F.S. This section currently provides that nothing in the Act is to be construed to preempt a governmental member operator from reasonable regulation of its rights-of-way. The CS states that this exemption does not exempt a municipality, county, district, or other local governmental member operator from the provisions of the chapter that apply to the member operator.

Section 10 provides that the CS takes effect October 1, 2006.

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:

Persons alleged to have violated the Act would be subject to payment of court costs.

C. Government Sector Impact:

The new provisions on allocation of civil penalties will have an indeterminate, but likely minimal, impact on governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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