

By the Committee on Communications and Public Utilities; and
Senator Miller

579-1792-06

1 A bill to be entitled
2 An act relating to damage prevention and safety
3 of underground facilities; amending s. 556.101,
4 F.S.; providing legislative intent that
5 Sunshine State One-Call of Florida, Inc., is
6 not required or permitted to locate or mark
7 underground facilities; amending s. 556.102,
8 F.S.; redefining the term "member operator" to
9 remove an exception for a small municipality
10 that elects not to participate in the
11 notification system; amending ss. 556.103 and
12 556.104, F.S.; deleting provisions exempting a
13 small city from membership in the Sunshine
14 State One-Call of Florida, Inc.; amending s.
15 556.105, F.S.; requiring that specified
16 information be placed in the excavation
17 notification system; providing an exception for
18 underwater excavations; providing that the
19 information is valid for 30 calendar days;
20 requiring that a notification number assigned
21 to an excavator be provided to a law
22 enforcement officer, government code inspector,
23 or code enforcement officer upon request;
24 requiring that a member operator respond to the
25 system within a specified time indicating the
26 status of its facility protection operations;
27 requiring the corporation to establish a
28 communication system between member operators
29 and excavators; requiring an excavator to
30 verify the system's positive responses before
31 beginning excavation; requiring operators to

1 use a specified color-code manual; amending s.
2 556.106, F.S.; providing that the notification
3 system has no duty to and may not mark or
4 locate underground facilities; providing that a
5 person has no right of recovery against the
6 notification system for failing to mark or
7 locate underground facilities; providing that
8 the system is not liable for the failure of a
9 member operator to comply with the requirements
10 of the act; amending s. 556.107, F.S.;
11 correcting cross-references; providing for the
12 distribution of civil penalties; authorizing
13 the corporation to retain legal counsel to
14 represent the corporation in certain legal
15 proceedings; amending s. 556.108, F.S.;
16 providing that certain single-family
17 residential properties are not exempt from
18 mandatory location notification; providing that
19 certain excavations by surveyors, mappers, or
20 pest control services are exempt from mandatory
21 location notification if mechanized equipment
22 is not used; amending s. 556.111, F.S.;
23 providing that certain provisions do not
24 preempt a governmental member operator from
25 regulation of its right-of-way under certain
26 conditions; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 556.101, Florida Statutes, is
31 amended to read:

1 556.101 Short title; legislative intent.--
2 (1) This act may be cited as the "Underground Facility
3 Damage Prevention and Safety Act."
4 (2) It is the intent of the Legislature to provide
5 access for excavating contractors and the public to provide
6 notification to the system of their intent to engage in
7 excavation or demolition. This notification system shall
8 provide the member operators an opportunity to identify and
9 locate their underground facilities. Under this notification
10 system, Sunshine State One-Call of Florida, Inc., is not
11 required or permitted to locate or mark underground
12 facilities.
13 (3) It is the purpose of this act to:
14 (a) Aid the public by preventing injury to persons or
15 property and the interruption of services resulting from
16 damage to an underground facility caused by excavation or
17 demolition operations.
18 (b) Create a not-for-profit corporation comprised of
19 operators of underground facilities in this state to
20 administer ~~the provisions of~~ this act.
21 (c) Fund the cost of administration through
22 contributions from the member operators for services provided
23 to the member operators and from charges made to others for
24 services requested and provided, such as record searches,
25 education or training, and damage prevention activities.
26 (d) Reserve to the state the power to regulate any
27 subject matter specifically addressed in this act.
28 (e) Permit any local law enforcement officer, local
29 government code inspector, or code enforcement officer ~~or~~
30 ~~permitting agency inspector~~ to enforce this act without the
31

1 need to incorporate the provisions of this act into any local
2 code or ordinance.

3 (f) Foster the awareness of federal laws and
4 regulations that promote safety with respect to underground
5 facilities, including, but not limited to, the Federal
6 Pipeline Safety Act of 1968, as amended, the Pipeline Safety
7 Improvement Act of 2002, OSHA Standard 1926.651, and the
8 National Electric Safety Code, ANSI C-2, by requiring and
9 facilitating the advance notice of activities by those who
10 engage in excavation or demolition operations.

11 (4) It is not the purpose of this act to amend or void
12 any permit issued by a state agency for placement or
13 maintenance of facilities in its right-of-way.

14 Section 2. Subsection (8) of section 556.102, Florida
15 Statutes, is amended to read:

16 556.102 Definitions.--As used in this act:

17 (8) "Member operator" means any person who furnishes
18 or transports materials or services by means of an underground
19 facility ~~except a small municipality that has elected not to~~
20 ~~participate in the one call notification system in the manner~~
21 ~~set forth in s. 556.103(1).~~

22 Section 3. Subsection (1) of section 556.103, Florida
23 Statutes, is amended to read:

24 556.103 Creation of the corporation; establishment of
25 the board of directors; authority of the board; annual
26 report.--

27 (1) The "Sunshine State One-Call of Florida, Inc." is
28 ~~hereby~~ created as a not-for-profit corporation. Each operator
29 of an underground facility in this state shall be a member of
30 the corporation and shall use and participate in the system,
31 ~~except that a small city as defined in s. 120.52 may elect by~~

1 ~~January 1, 1998, not to participate in the system until~~
2 ~~January 1, 2003, through a written notification identifying~~
3 ~~any reasons for declining membership. The corporation shall~~
4 ~~be formed by June 1, 1993.~~ The corporation shall administer
5 the provisions of this act. The corporation shall exercise
6 its powers through a board of directors established pursuant
7 to this section.

8 Section 4. Section 556.104, Florida Statutes, is
9 amended to read:

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

25 Section 5. Section 556.105, Florida Statutes, is
26 amended to read:

27 556.105 Procedures.--

28 (1)(a) Not less than 2 ~~nor more than 5~~ full business
29 days before beginning any excavation or demolition, except an
30 excavation beneath the waters of the state, an excavator shall
31 provide the following information through the system:

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

5 2. The name and telephone number of the representative
6 for the excavator and a valid electronic address to facilitate
7 a positive response by the system should be provided, if
8 available.

9 3. The county, the city or closest city, and the
10 street address or the closest street, road, or intersection to
11 the location where the excavation or demolition is to be
12 performed, and the construction limits of the excavation or
13 demolition.

14 4. The commencement date and anticipated duration of
15 the excavation or demolition.

16 5. Whether machinery will be used for the excavation
17 or demolition.

18 6. The person or entity for whom the work is to be
19 done.

20 7. The type of work to be done.

21 8. The approximate depth of the excavation.

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

29 (c) Information provided by an excavator ~~is shall be~~
30 ~~considered~~ valid for 30 ~~a period of 20~~ calendar days after the
31 ~~each~~ date such information is provided to the system. In

1 computing the period for which information furnished is
2 ~~considered~~ valid, the date the notice is provided is ~~shall~~ not
3 ~~be~~ counted, but the last day of the ~~such~~ period shall be
4 counted unless it is a Saturday, Sunday, or a legal holiday,
5 in which event, the period runs ~~shall run~~ until the end of the
6 next day that ~~which~~ is not a Saturday, Sunday, or a legal
7 holiday.

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

19 (3) The system shall provide the person who provided
20 notification with the names of the member operators who shall
21 ~~will~~ be advised of the notification and a notification number
22 that ~~which~~ specifies the date and time of the notification.

23 (4) The notification number provided to the excavator
24 under this section shall be provided to any law enforcement
25 officer, government code inspector, or code enforcement
26 officer upon request.

27 (5)~~(4)~~ All member operators within the defined area of
28 a proposed excavation or demolition shall be promptly notified
29 through the system, except that member operators with
30 state-owned underground facilities located within the
31 right-of-way of a state highway need not be notified of

1 excavation or demolition activities and are under no
2 obligation to mark or locate ~~the~~ such facilities.

3 (a) When an excavation site cannot be described in
4 information provided under subparagraph (1)(a)3. with
5 sufficient particularity to enable the member operator to
6 ascertain the excavation site, and if the excavator and member
7 operator have not mutually agreed otherwise, the excavator
8 shall premark the proposed area of the excavation before a
9 member operator is required to identify the horizontal route
10 of its underground facilities in the proximity of any
11 excavation. However, premarking is not required for any
12 excavation that is over 500 feet in length and is not required
13 where the premarking could reasonably interfere with traffic
14 or pedestrian control.

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

29 (c) If a member operator determines that a proposed
30 excavation is in proximity to or in conflict with an
31 underground facility of the member operator beneath the waters

1 of the state, the member operator shall identify the estimated
2 horizontal route of the underground facility, within 10
3 business days, using marking buoys or other suitable devices,
4 unless directed otherwise by an agency having jurisdiction
5 over the waters of the state under which the member operator's
6 underground facility is located.

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

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

28 (b) An excavator ~~may shall~~ not demolish in the area
29 described in the notice given under ~~pursuant to~~ subsection (1)
30 until all member operator underground facilities have been
31 marked and located, or removed.

1 ~~(7)(a)(6)(a)~~ A member operator that states that it
2 does not have accurate information concerning the exact
3 location of its underground facilities is exempt from the
4 requirements of paragraphs~~(5)(b)(4)(b)~~ and (c), but shall
5 provide the best available information to the excavator in
6 order to comply with the requirements of this section. An
7 excavator is not liable for any damage to an underground
8 facility under the exemption in this subsection if the
9 excavation or demolition is performed with reasonable care and
10 detection equipment or other acceptable means to locate
11 underground facilities are used.

12 (b) A member operator may not exercise the exemption
13 provided by this subsection if the member operator has
14 underground facilities that have not been taken out of service
15 and that are locatable using available designating
16 technologies to locate underground facilities.

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

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

8 (9)(a) After receiving notification from the system, a
9 member operator shall provide a positive response to the
10 system within 2 full business days, or 10 such days for an
11 underwater excavation, indicating the status of operations to
12 protect the facility.

13 ~~(8)(a) If a member operator determines that the~~
14 ~~excavation or demolition is not near an existing underground~~
15 ~~facility of the member operator, the member operator shall~~
16 ~~notify the excavator within 2 full business days after the~~
17 ~~time of the notification to the system that no conflict exists~~
18 ~~and that the excavation or demolition area is clear. An~~
19 ~~excavator who has knowledge of the existence of an underground~~
20 ~~facility of a member operator in the area is responsible for~~
21 ~~contacting the member operator if a facility is not marked.~~

22 (b) The system shall establish and maintain a process
23 to facilitate a positive-response communication between member
24 operators and excavators. The system is exempt from any
25 requirement to initiate a positive response to an excavator
26 when an excavator does not provide a valid electronic address
27 to facilitate a positive response by the system.

28 (c) An excavator shall verify the system's positive
29 responses before beginning excavation. If an excavator knows
30 that an existing underground facility of a member operator is
31 in the area, the excavator must contact the member operator if

1 the facility is not marked and a positive response has not
2 been received by the system. The system shall implement
3 procedures for positive response by January 1, 2004.

4 ~~(10)(9)~~ A member operator shall use the recommended
5 ~~guidelines for uniform temporary marking of underground~~
6 ~~facilities as approved by the Utility Location and~~
7 ~~Coordinating Council~~ "Uniform Color Code for Utilities" of the
8 American Public Works Association when marking the horizontal
9 route of any underground facility of the operator.

10 ~~(11)(10)~~ Before ~~Prior to~~ or during excavation or
11 demolition, if the marking of the horizontal route of any
12 facility is removed or is no longer visible, the excavator
13 shall stop excavation or demolition activities in the vicinity
14 of the facility and shall notify the system to have the route
15 remarked.

16 ~~(12)(11)~~ If any contact with or damage to any pipe,
17 cable, or its protective covering, or any other underground
18 facility occurs, the excavator causing the contact or damage
19 shall immediately notify the member operator. Upon receiving
20 notice, the member operator shall send personnel to the
21 location as soon as possible to effect temporary or permanent
22 repair of the contact or damage. Until such time as the
23 contact or damage has been repaired, the excavator shall cease
24 excavation or demolition activities that may cause further
25 damage to such underground facility.

26 Section 6. Subsection (2) of section 556.106, Florida
27 Statutes, is amended, present subsection (6) is redesignated
28 as subsection (7) and amended, and a new subsection (6) is
29 added to that section, to read:

30 556.106 Liability of the member operator, excavator,
31 and system.--

1 (2)(a) ~~If a~~ ~~In the event any~~ person violates s.
2 556.105(1) or ~~(6)(5)~~, and subsequently, whether by himself or
3 herself or through the person's employees, contractors,
4 subcontractors, or agents, performs an excavation or
5 demolition that which damages an underground facility of a
6 member operator, it is ~~shall be~~ rebuttably presumed that the
7 ~~such~~ person was negligent. The ~~Such~~ person, if found liable,
8 is ~~shall be~~ liable for the total sum of the losses to all
9 member operators involved as those costs are normally
10 computed. Any damage for loss of revenue and loss of use may
11 ~~shall~~ not exceed \$500,000 per affected underground facility,
12 except that revenues lost by a governmental member operator
13 whose, which revenues are used to support payments on
14 principal and interest on bonds may, shall not be limited. Any
15 liability of the state and its agencies and its subdivisions
16 which arises out of this chapter is ~~shall be~~ subject to the
17 provisions of s. 768.28.

18 (b) If any excavator fails to discharge a duty imposed
19 by the provisions of this act, the ~~such~~ excavator, if found
20 liable, is ~~shall be~~ liable for the total sum of the losses to
21 all parties involved as those costs are normally computed.
22 Any damage for loss of revenue and loss of use may ~~shall~~ not
23 exceed \$500,000 per affected underground facility, except that
24 revenues lost by a governmental member operator whose, which
25 revenues are used to support payments on principal and
26 interest on bonds may, shall not be limited.

27 (c) Any liability of the state, its agencies, or its
28 subdivisions which arises out of this act is ~~shall be~~ subject
29 to the provisions of s. 768.28.

30 (d) Obtaining information as to the location of an
31 underground facility from the member operator as required by

1 | this act does not excuse any excavator from performing an
2 | excavation or demolition in a careful and prudent manner,
3 | based on accepted engineering and construction practices, and
4 | ~~it nor~~ does not ~~it~~ excuse the ~~such~~ excavator from liability
5 | for any damage or injury resulting from any excavation or
6 | demolition.

7 | ~~(c) When an excavator knows or should know of the~~
8 | ~~presence of an underground facility of a nonmember small city~~
9 | ~~as defined in s. 120.52, he or she shall make reasonable~~
10 | ~~efforts to contact the small city that owns or operates that~~
11 | ~~facility prior to commencing an excavation or demolition.~~

12 | (6) The system does not have a duty to mark or locate
13 | underground facilities and may not do so, and a right of
14 | recovery does not exist against the system for failing to mark
15 | or locate underground facilities. The system is not liable for
16 | the failure of a member operator to comply with the
17 | requirements of this act.

18 | ~~(7)(6)~~ An excavator who performs any excavation with
19 | hand tools under s. 556.108(4)(c) or (5) pursuant to s.
20 | ~~556.108(5)~~ is liable for any damage to any operator's
21 | underground facilities damaged during such excavation.

22 | Section 7. Section 556.107, Florida Statutes, is
23 | amended to read:

24 | 556.107 Violations.--

25 | (1) NONCRIMINAL INFRACTIONS.--

26 | (a) Violations of the following provisions are
27 | noncriminal infractions:

28 | 1. Section 556.105(1), relating to providing required
29 | information.

30 | 2. Section 556.105(6) ~~556.105(5)~~, relating to the
31 | avoidance of excavation.

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

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

5 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c)
6 relating to identification of underground facilities, if a
7 member operator does not mark an underground facility, but not
8 if a member operator marks an underground facility
9 incorrectly.

10 (b) Any excavator or member operator who commits a
11 noncriminal infraction under paragraph (a) may be issued a
12 citation by any local or state law enforcement officer,
13 government code inspector, or code enforcement officer
14 ~~permitting agency inspector~~, and the issuer of a citation may
15 require an ~~any~~ excavator to cease work on any excavation or
16 not start a proposed excavation until there has been
17 compliance with the provisions of this act. Citations shall
18 ~~may~~ be hand-delivered ~~issued~~ to any employee of the excavator
19 or member operator who is ~~directly~~ involved in the noncriminal
20 infraction. The citation shall be issued in the name of the
21 excavator or member operator, whichever is applicable.

22 (c) Any excavator or member operator who commits a
23 noncriminal infraction under paragraph (a) may be required to
24 appear before the county court. The civil penalty for any such
25 infraction is \$250, plus fees and court costs except as
26 otherwise provided in this section. If a citation is issued by
27 a local law enforcement officer, a local government code
28 inspector, or a code enforcement officer, 80 percent of the
29 civil penalty collected by the clerk of the court shall be
30 distributed to the local governmental entity whose employee
31 issued the citation and 20 percent of the penalty shall be

1 retained by the clerk to cover administrative costs, in
2 addition to other fees or court costs. If a citation is issued
3 by a state law enforcement officer, the civil penalty
4 collected by the clerk shall be retained by the clerk for
5 deposit into the fine and forfeiture fund established pursuant
6 to s. 142.01. Any person who fails to appear or otherwise
7 properly respond to a citation issued pursuant to paragraph
8 (d) shall, in addition to the citation, be charged with the
9 offense of failing to respond to such citation and, upon
10 conviction, commits ~~be guilty of~~ a misdemeanor of the second
11 degree, punishable as provided in s. 775.082 or s. 775.083. A
12 written warning to this effect shall be provided at the time
13 any citation is issued pursuant to paragraph (b).

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

- 16 1. Post a bond, which shall be equal in amount to the
17 applicable civil penalty, plus fees or court costs; or
18 2. Sign and accept a citation indicating a promise to
19 appear before the county court.

20
21 The person issuing the citation ~~officer~~ may indicate on the
22 citation the time and location of the scheduled hearing and
23 shall indicate the applicable civil penalty.

24 (e) Any person charged with a noncriminal infraction
25 under paragraph (a), unless required to appear before the
26 county court, may:

- 27 1. Pay the civil penalty plus fees and court costs, in
28 lieu of appearance, either by mail or in person, within 30 ~~10~~
29 days after the date of receiving the citation; or
30 2. Forfeit bond, if a bond has been posted, by not
31 appearing at the designated time and location.

1
2 If the person cited follows either of the above procedures,
3 she or he ~~is shall be~~ deemed to have admitted to committing
4 the infraction and to have waived the right to a hearing on
5 the issue of commission of the infraction. ~~The Such~~ admission
6 may be used as evidence in any other proceeding under this
7 act.

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

17 (g) At a hearing under this chapter, the commission of
18 a charged infraction must be proven by a preponderance of the
19 evidence.

20 (h) If a person is found by the hearing official to
21 have committed an infraction, ~~the such~~ person may appeal that
22 finding to the circuit court.

23 (i) Sunshine State One-Call of Florida, Inc., may, at
24 its own cost, retain an attorney to assist in the presentation
25 of relevant facts and law in the county court proceeding
26 pertaining to the citation issued under this section. The
27 corporation may also appear in any case appealed to the
28 circuit court if a county court finds that an infraction of
29 the chapter was committed. An appellant in the circuit court
30 proceeding shall timely notify the corporation of any appeal
31 under this section.

1 (2) MISDEMEANORS.--Any person who knowingly and
2 willfully removes or otherwise destroys the valid stakes or
3 other valid physical markings described in s. 556.105(5)(b) ~~s.~~
4 ~~556.105(4)(b)~~ and (c) used to mark the horizontal route of an
5 underground facility commits a misdemeanor of the second
6 degree, punishable as provided in s. 775.082 or s. 775.083.
7 For purposes of this subsection, stakes or other nonpermanent
8 physical markings are considered valid for 30 ~~20~~ calendar days
9 after information is provided to the system under s.
10 556.105(1)(c).

11 Section 8. Subsections (1) and (4) of section 556.108,
12 Florida Statutes, are amended to read:

13 556.108 Exemptions.--The notification requirements
14 provided in s. 556.105(1) do not apply to:

15 (1) Any excavation or demolition performed by the
16 owner of a single-family residential property, not including
17 property that is subdivided or is to be subdivided into more
18 than one single-family residential property; or for such owner
19 by a member operator or an agent of a member operator when
20 such excavation or demolition is made entirely on such land,
21 and only up to a depth of 10 inches; provided due care is used
22 and there is no encroachment on any member operator's
23 right-of-way, easement, or permitted use.

24 (4) Any excavation of 18 inches or less for:

25 (a) Surveying public or private property by surveyors
26 or mappers as defined in chapter 472 and services performed by
27 a pest control licensee under chapter 482, excluding marked
28 rights-of-way, marked easements, or permitted uses where
29 marked, ~~if provided~~ mechanized equipment is not used in the
30 process of such surveying or pest control services and the
31 surveying or pest control services are ~~is~~ performed in

1 accordance with the practice rules established under s.
2 472.027 or s. 482.051; ~~or~~

3 (b) Maintenance activities performed by a state agency
4 and its employees when such activities are within the
5 right-of-way of a public road; ~~however, provided~~, if a member
6 operator has permanently marked facilities on such
7 right-of-way, no mechanized equipment may be used without
8 first providing notification; ~~or-~~

9 (c) Locating, repairing, connecting, adjusting, or
10 routine maintenance of a private or public underground
11 facility by an excavator, if the excavator is performing such
12 work for the current owner or future owner of the underground
13 facility and if mechanized equipment is not used.

14 Section 9. Section 556.111, Florida Statutes, is
15 amended to read:

16 556.111 Applicability to existing law.--Nothing in
17 this act shall be construed to:

18 (1) Constitute the establishment or enlargement of any
19 rights to the use of real property or create an interest
20 therein for the placement, construction, repair, maintenance,
21 relocation, or excavation or demolition of any underground
22 facility;

23 (2) Waive any right of a party having an interest in
24 real property to charge any fee for the use regarding such
25 property; or

26 (3) Preempt a governmental member operator from
27 reasonable regulation of its right-of-way; ~~however, this~~
28 subsection does not exempt, and may not be used by the
29 governmental member operator as the basis to exempt, the
30 governmental member operator from complying with the

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1 provisions of this section which apply to a governmental
2 member operator, including s. 556.105.

3 Section 10. This act shall take effect October 1,
4 2006.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 1394

9 The Committee Substitute for Senate Bill 1394:

10 -Requires that citations be hand delivered to any employee of
11 the excavator or member operator who is involved in the
12 noncriminal infraction, and that the citation be issued in the
13 name of the applicable excavator or member operator.

14 -Changes the distribution of civil penalties resulting from a
15 citation issued by a state law enforcement officer.

16 -Adds to the bill a provision in s. 556.111, F.S., stating
17 that while the act does not preempt a governmental member
18 operator from reasonable regulation of its right-of-way, the
19 governmental member operator must still comply with the act,
20 including the notice requirement.

21 -Provides that the current exemption from the act for
22 excavation or demolition performed by the owner of a
23 single-family residential property does not apply if the
24 property is subdivided or is to be subdivided into more than
25 one single-family residential property.

26 -Adds an exemption from notification requirements for any
27 excavation of 18 inches or less for pest control services.
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