

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789
SPONSOR(S): Murzin
TIED BILLS:

Damage Prevention and Safety of Underground Facilities
IDEN./SIM. BILLS: SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Holt
2) Civil Justice Committee			
3) Finance & Tax Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Chapter 93-240, Laws of Florida, created the Underground Facility Damage Prevention and Safety Act (Act). The act is codified at chapter 556, F.S. It established a statewide, one-call notification system. The purpose of the act was to prevent injury “to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations.” A not-for-profit corporation was established pursuant to section 556.101(3)(c), F.S., comprised of Florida underground facilities operators (member operators) in Florida to administer the chapter provisions. The corporation Sunshine State One-Call of Florida, Inc. (SSOCOF) was incorporated on February 1, 1993.

HB 798 summarily amends the Underground Facility Damage Prevention and Safety Act as follows:

- The bill amends legislative intent, to clarify the role of SSOCOF as the administrator of the statewide, one-call notification system, and that as such, it is not required or permitted to locate or mark underground facilities, and the bill creates a liability exemption for SSOCOF due to the failure of member operators to comply the act . Specificity for the act enforcement entities is also provided in the bill.
- The bill removes obsolete language related to small municipalities deferred participation in the one-call notification system and to the formation of a not-for-profit corporation to administer the provisions of chapter 556, F.S.
- Current procedures for notification of excavation or demolition are amended and also include an exception for underwater excavation. The validity duration for notification information is increased from 20 calendar days to 30.
- Florida’s one-call notification system is clarified in the bill as the methodology for the facilitation of positive response communications between excavators and member operators, relating to the status of operations to protect facilities. However, the responsibility is on the excavator to check the system for these responses and under certain circumstances to contact member operators.
- Changes are made in the bill to non-criminal infraction section provide:
 - a scheme to distribute penalties;
 - for the payment of fees or costs to the Clerk of Court;
 - for SSOCOF under certain circumstances to obtain legal representation
- The bill further provides a hand digging exemption for excavators.

The fiscal impact of the bill is indeterminate at this time, but would most likely be a minimal increase in revenues to local governments.

This act shall take effect October 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility-The bill adds fees and court costs to the cost of a civil infraction for violating provisions of the Underground Facility Damage Prevention and Safety Act.

Maintain Public Security-The bill amends the Underground Facility Damage Prevention and Safety Act, which the intent of is to prevent damage to underground facilities such as electric and telephone lines, and water and sewer pipes.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 93-240, L.O.F., created the "Underground Facility Damage Prevention and Safety Act" (act). The act is codified at ch. 556, F.S. It established a statewide, one-call notification system. A single toll-free number is provided for persons to give notification to owners of underground facilities of intent to engage in excavation or demolition. Section 556.101, F.S., states that the purpose of the act is to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations."

A not-for-profit corporation was established pursuant to s. 556.101(3)(c), F.S., comprised of operators of underground facilities in Florida to administer the provisions of ch. 556, F.S. The corporation, "Sunshine State One-Call of Florida, Inc." (SSOCF) was incorporated on February 1, 1993. The cost of the system is funded "entirely and exclusively" by assessed contribution from the members of the corporation, called member operators.

Proposed Changes

The bill amends several sections of the Act.

The bill amends s. 556.101(2), and creates s. 556.106(6), F.S., to provide that SSOCOF is not required or permitted to mark underground facilities. The new s. 556.106(6), F.S., also provides that the system does not have a duty to mark or locate underground facilities and may not do so, and that a right of recovery does not exist against the system for failing to mark or locate underground facilities. The new language provides that the SSOCOF is not liable for the failure of a member operator to comply with the requirements of this act.

The bill amends ss. 556.101(2), 556.102(8), 556.103 (1), and 556.104, F.S., to remove obsolete provisions allowing small cities to elect not to participate in the system. Membership in SSOCOF became mandatory for small cities on January 1, 2003.

The bill amends ss. 556.101(3)(e), and 556.107(1)(b) and (c), F.S., to correct an incorrect term in the 2002 revision to this statute.¹ The current statute uses the incorrect term of "permitting agency inspector," while the bill changes it to the appropriate term of "local government code inspector or code enforcement officer."

Current law provides that not less than two nor more than five full business days before beginning any excavation or demolition, the excavator must call the system. A recent Florida appellate court decision confirms that requirement that in order to have a valid ticket, you must start excavation within the two to

¹ Ch. 2002-234, L.O.F.

five day window.² The bill amends these provisions of ss. 556.105(1)(a) and (c), F.S., to require that the call be made to SSOCOF not less than two full days before excavating, eliminating the short window to begin excavation, and to extend the ticket life from 20 days to 30 days. A procedural change is also made to eliminate any confusion surrounding the 10-day response time for underwater facility marking.

The bill amends s. 556.105(1)(a)2 and creates s. 556.105(9)(b), F.S., to include a new requirement for an excavator to provide SSOCOF with a valid electronic address, if one is available. With an electronic address, SSOCOF can initiate a positive response³ to the excavator. If an electronic address is not provided, SSOCOF will not have to initiate a positive response to an excavator, even though under the new s. 556.105(9)(c), F.S., an excavator must verify the positive responses made by member operators prior to excavation.

The bill adds a new s. 556.105(4), F.S. to provide that the notification (ticket) number provided to the excavator shall be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

The bill creates s. 556.105(9), F.S., establishing procedures for dealing with positive response. These changes have become necessary due to technological and software enhancements at SSOCOF that permit active positive response system. This system greatly improves communication between excavators and facility owners/operators. This section provides that after receiving notification from the system, a member operator shall provide a positive response to the system within two full business days or 10 full business days for underwater excavations, indicating the status of operations to protect the facilities. The system is required to establish and maintain a process to facilitate a positive-response communications between member operators and excavators. This system is exempt from any requirement to initiate a positive response to an excavator when an excavator does not provide a positive electronic address to facilitate a positive response from the system. The bill requires an excavator to verify the system's positive responses before beginning excavation. The bill keeps the requirement that if an excavator knows that a member operator has an existing underground facility 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 bill deletes current s. 556.105(8), F.S., that provides if a member operator determines that the excavation or demolition is not near an existing underground facility, it must notify the excavator within two full business days after the time of the notification that no conflict exists and that the excavation or demolition area is clear. This section also required SSOCOF to implement procedures for a positive response system by January 1, 2004.

The bill amends s. 556.105(10), F.S., to change the reference to the color code for marking underground facilities. While the colors have not changed, the organization that maintains the color codes has changed, and this would have the statute accurately refer to them.

The bill amends s. 556.107, F.S., to make the following changes to the non-criminal infraction section of the bill:

- Makes a previously discussed change to properly identify code enforcement officers;
- Provides for a scheme for the distribution of penalties paid for non-criminal infractions;
 - Twenty percent to the clerk of Court and 80 percent to the local government whose employee issued the citation, or
 - One hundred percent to the Clerk of Court, if the citation was issued by a state law enforcement officer.

² Martin v. Florida Power & Light, 909 So.2d 555 (Fla. 4th DCA 2005).

³ S. 556.102(10), F.S., defines "positive response" as the means of communications among member operators, excavators, and the system concerning the status of locating an underground facility.

- Provides for the payment of fees or costs to the Clerk of Court, in addition to the penalty imposed
- Allows SSOCOF, at its own cost, to help with cases in county court or handle an appeal, if the determination of the commission of a charged infraction is appealed,

The bill amends s. 556.108(4), F.S. to provide that the notification requirements do not apply to locating, repairing, connecting, adjusting, or routine maintenance of a private or public utility facility by an excavator, if mechanized equipment is not used.

C. SECTION DIRECTORY:

- Section 1 Amends s. 556.101, F.S., relating to legislative intent.
- Section 2 Amends s. 556.102(8), F.S., relating to the definition of “member operator.”
- Section 3 Amends s. 556.103(1), F.S., relating to the creation of the corporation.
- Section 4 Amends s. 556.104, F.S., relating to the free access notification system.
- Section 5 Amends s. 115.105, F.S., relating to procedures.
- Section 6 Amends s. 556.106, F.S., relating to the liability of the member operator, excavator, and system.
- Section 7 Amends s. 556.107, F.S., relating to violations.
- Section 8 Amends s. 556.108(4), F.S., relating to exemptions.
- Section 9 This act shall take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A local government will receive 80 percent of the fines for non-criminal infractions when the citation is issued by one of its employees. Additionally, the local Clerk of Court will receive portions of the fines and has the ability to recover costs from those who commit a non-criminal infraction. The actual impact on a particular local government may depend on how actively it enforces provisions of the act, and cannot be determined at this time. However, the impacts would most likely be minimal.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES