

1 A bill to be entitled

2 An act relating to damage prevention and safety of
3 underground facilities; amending s. 556.101, F.S.;
4 providing legislative intent that Sunshine State One-Call
5 of Florida, Inc., is not required or permitted to locate
6 or mark underground facilities; amending s. 556.102, F.S.;
7 redefining the term "member operator" to remove an
8 exception for a small municipality that elects not to
9 participate in the notification system; amending ss.
10 556.103 and 556.104, F.S.; deleting provisions exempting a
11 small city from membership in the Sunshine State One-Call
12 of Florida, Inc.; amending s. 556.105, F.S.; requiring
13 that specified information be placed in the excavation
14 notification system; providing an exception for underwater
15 excavations; providing that the information is valid for
16 30 calendar days; requiring that a notification number
17 assigned to an excavator be provided to a law enforcement
18 officer, government code inspector, or code enforcement
19 officer upon request; requiring that a member operator
20 respond to the system within a specified time indicating
21 the status of its facility protection operations;
22 requiring the corporation to establish a communication
23 system between member operators and excavators; requiring
24 an excavator to verify the system's positive responses
25 before beginning excavation; requiring operators to use a
26 specified color-code manual; amending s. 556.106, F.S.;
27 providing that the notification system has no duty to and
28 may not mark or locate underground facilities; providing

29 that a person has no right of recovery against the
 30 notification system for failing to mark or locate
 31 underground facilities; providing that the system is not
 32 liable for the failure of a member operator to comply with
 33 the requirements of the act; amending s. 556.107, F.S.;
 34 correcting cross-references; providing for the
 35 distribution of civil penalties; authorizing the
 36 corporation to retain legal counsel to represent the
 37 corporation in certain legal proceedings; amending s.
 38 556.108, F.S.; providing that certain excavations are
 39 exempt from mandatory location notification if mechanized
 40 equipment is not used; providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 556.101, Florida Statutes, is amended
 45 to read:

46 556.101 Short title; legislative intent.--

47 (1) This act may be cited as the "Underground Facility
 48 Damage Prevention and Safety Act."

49 (2) It is the intent of the Legislature to provide access
 50 for excavating contractors and the public to provide
 51 notification to the system of their intent to engage in
 52 excavation or demolition. This notification system shall provide
 53 the member operators an opportunity to identify and locate their
 54 underground facilities. Under this notification system, Sunshine
 55 State One-Call of Florida, Inc., is not required or permitted to
 56 locate or mark underground facilities.

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

58 (a) Aid the public by preventing injury to persons or
 59 property and the interruption of services resulting from damage
 60 to an underground facility caused by excavation or demolition
 61 operations.

62 (b) Create a not-for-profit corporation comprised of
 63 operators of underground facilities in this state to administer
 64 ~~the provisions of~~ this act.

65 (c) Fund the cost of administration through contributions
 66 from the member operators for services provided to the member
 67 operators and from charges made to others for services requested
 68 and provided, such as record searches, education or training,
 69 and damage prevention activities.

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

72 (e) Permit any local law enforcement officer, local
 73 government code inspector, or code enforcement officer ~~or~~
 74 ~~permitting agency inspector~~ to enforce this act without the need
 75 to incorporate the provisions of this act into any local code or
 76 ordinance.

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

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

82 556.102 Definitions.--As used in this act:

83 (8) "Member operator" means any person who furnishes or
 84 transports materials or services by means of an underground

85 ~~facility except a small municipality that has elected not to~~
 86 ~~participate in the one-call notification system in the manner~~
 87 ~~set forth in s. 556.103(1).~~

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

90 556.103 Creation of the corporation; establishment of the
 91 board of directors; authority of the board; annual report.--

92 (1) The "Sunshine State One-Call of Florida, Inc." is
 93 ~~hereby~~ created as a not-for-profit corporation. Each operator of
 94 an underground facility in this state shall be a member of the
 95 corporation and shall use and participate in the system, ~~except~~
 96 ~~that a small city as defined in s. 120.52 may elect by January~~
 97 ~~1, 1998, not to participate in the system until January 1, 2003,~~
 98 ~~through a written notification identifying any reasons for~~
 99 ~~declining membership. The corporation shall be formed by June 1,~~
 100 ~~1993.~~ The corporation shall administer the provisions of this
 101 act. The corporation shall exercise its powers through a board
 102 of directors established pursuant to this section.

103 Section 4. Section 556.104, Florida Statutes, is amended
 104 to read:

105 556.104 Free-access notification system.--The corporation
 106 shall maintain a free-access notification system. Any person who
 107 furnishes or transports materials or services by means of an
 108 underground facility in this state shall participate as a member
 109 operator of the system ~~except that a small city as defined in s.~~
 110 ~~120.52 may elect not to participate in the system in the manner~~
 111 ~~set forth in s. 556.103(1).~~ The purpose of the system is to
 112 receive notification of planned excavation or demolition

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113 activities and to notify member operators of the ~~such~~ planned
114 excavation or demolition activities. The system shall provide a
115 single toll-free telephone number within this state which
116 excavators can use to notify member operators of planned
117 excavation or demolition activities, and the system may also
118 provide additional modes of access at no cost to the user.

119 Section 5. Section 556.105, Florida Statutes, is amended
120 to read:

121 556.105 Procedures.--

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

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

129 2. The name and telephone number of the representative for
130 the excavator and a valid electronic address to facilitate a
131 positive response by the system should be provided, if
132 available.

133 3. The county, the city or closest city, and the street
134 address or the closest street, road, or intersection to the
135 location where the excavation or demolition is to be performed,
136 and the construction limits of the excavation or demolition.

137 4. The commencement date and anticipated duration of the
138 excavation or demolition.

139 5. Whether machinery will be used for the excavation or
140 demolition.

- 141 6. The person or entity for whom the work is to be done.
- 142 7. The type of work to be done.
- 143 8. The approximate depth of the excavation.

144 (b) The excavator shall provide the ~~such~~ information by
 145 notifying the system through its free-access notification system
 146 during business hours, as determined by the corporation, or by
 147 such other method as authorized by the corporation. Any
 148 notification received by the system at any time other than
 149 during business hours shall be considered to be received at the
 150 beginning of the next business day.

151 (c) Information provided by an excavator is ~~shall be~~
 152 ~~considered~~ valid for 30 ~~a period of 20~~ calendar days after the
 153 ~~each~~ date such information is provided to the system. In
 154 computing the period for which information furnished is
 155 ~~considered~~ valid, the date the notice is provided is ~~shall~~ not
 156 be counted, but the last day of the ~~such~~ period shall be counted
 157 unless it is a Saturday, Sunday, or a legal holiday, in which
 158 event, the period runs ~~shall run~~ until the end of the next day
 159 that ~~which~~ is not a Saturday, Sunday, or a legal holiday.

160 (2) Each notification by means of the system shall be
 161 recorded to document compliance with this act. Such record may
 162 be made by means of electronic, mechanical, or any other method
 163 of all incoming and outgoing wire and oral communications
 164 concerning location requests in compliance with chapter 934. The
 165 ~~Such~~ records shall be kept for ~~a period of~~ 5 years and, upon
 166 written request, shall be available to the excavator making the
 167 request, the member operator intended to receive the request,
 168 and their agents. However, custody of the records may ~~shall~~ not

169 be transferred from the system except under subpoena.

170 (3) The system shall provide the person who provided
 171 notification with the names of the member operators who shall
 172 ~~will~~ be advised of the notification and a notification number
 173 that ~~which~~ specifies the date and time of the notification.

174 (4) The notification number provided to the excavator
 175 under this section shall be provided to any law enforcement
 176 officer, government code inspector, or code enforcement officer
 177 upon request.

178 (5)~~(4)~~ All member operators within the defined area of a
 179 proposed excavation or demolition shall be promptly notified
 180 through the system, except that member operators with state-
 181 owned underground facilities located within the right-of-way of
 182 a state highway need not be notified of excavation or demolition
 183 activities and are under no obligation to mark or locate the
 184 ~~such~~ facilities.

185 (a) When an excavation site cannot be described in
 186 information provided under subparagraph (1)(a)3. with sufficient
 187 particularity to enable the member operator to ascertain the
 188 excavation site, and if the excavator and member operator have
 189 not mutually agreed otherwise, the excavator shall premark the
 190 proposed area of the excavation before a member operator is
 191 required to identify the horizontal route of its underground
 192 facilities in the proximity of any excavation. However,
 193 premarking is not required for any excavation that is over 500
 194 feet in length and is not required where the premarking could
 195 reasonably interfere with traffic or pedestrian control.

196 (b) If a member operator determines that a proposed

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197 excavation or demolition is in proximity to or in conflict with
198 an underground facility of the member operator, except a
199 facility beneath the waters of the state, which is governed by
200 paragraph (c), the member operator shall identify the horizontal
201 route by marking to within 24 inches from the outer edge of
202 either side of the underground facility by the use of stakes,
203 paint, flags, or other suitable means within 2 full business
204 days after the time the notification is received under
205 subsection (1). If the member operator is unable to respond
206 within such time, the member operator shall communicate with the
207 person making the request and negotiate a new schedule and time
208 that is agreeable to, and should not unreasonably delay, the
209 excavator.

210 (c) If a member operator determines that a proposed
211 excavation is in proximity to or in conflict with an underground
212 facility of the member operator beneath the waters of the state,
213 the member operator shall identify the estimated horizontal
214 route of the underground facility, within 10 business days,
215 using marking buoys or other suitable devices, unless directed
216 otherwise by an agency having jurisdiction over the waters of
217 the state under which the member operator's underground facility
218 is located.

219 (d) When excavation is to take place within a tolerance
220 zone, an excavator shall use increased caution to protect
221 underground facilities. The protection requires hand digging,
222 pot holing, soft digging, vacuum excavation methods, or other
223 similar procedures to identify underground facilities. Any use
224 of mechanized equipment within the tolerance zone must be

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225 supervised by the excavator.

226 (6) (a) ~~(5) (a)~~ An excavator shall avoid excavation in the
227 area described in the notice given under ~~pursuant to~~ subsection
228 (1) until each member operator underground facility has been
229 marked and located or until the excavator has been notified that
230 no member operator has underground facilities in the area
231 described in the notice, or for the time allowed for markings
232 set forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), whichever occurs
233 first. If a member operator has not located and marked its
234 underground facilities within the time allowed for marking set
235 forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), the excavator may
236 proceed with the excavation, if ~~provided~~ the excavator does so
237 with reasonable care, and if ~~provided, further, that~~ detection
238 equipment or other acceptable means to locate underground
239 facilities are used.

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

244 (7) (a) ~~(6) (a)~~ A member operator that states that it does
245 not have accurate information concerning the exact location of
246 its underground facilities is exempt from the requirements of
247 paragraphs (5) (b) ~~(4) (b)~~ and (c), but shall provide the best
248 available information to the excavator in order to comply with
249 the requirements of this section. An excavator is not liable for
250 any damage to an underground facility under the exemption in
251 this subsection if the excavation or demolition is performed
252 with reasonable care and detection equipment or other acceptable

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253 means to locate underground facilities are used.

254 (b) A member operator may not exercise the exemption
255 provided by this subsection if the member operator has
256 underground facilities that have not been taken out of service
257 and that are locatable using available designating technologies
258 to locate underground facilities.

259 (8) (a) ~~(7) (a)~~ If extraordinary circumstances exist, a
260 member operator shall notify the system of the member operator's
261 inability to comply with this section. For the purposes of this
262 section, the term "extraordinary circumstances" means
263 circumstances other than normal operating conditions that ~~which~~
264 exist and make it impractical for a member operator to comply
265 with ~~the provisions of~~ this act. After the system has received
266 notification of a member operator's inability to comply, the
267 system shall make that information known to excavators who
268 subsequently notify the system of an intent to excavate. The
269 member operator is relieved of responsibility for compliance
270 under the law during the period that the extraordinary
271 circumstances exist and shall promptly notify the system when
272 the extraordinary circumstances cease to exist.

273 (b) During the period when extraordinary circumstances
274 exist, the system shall remain available during business hours
275 to provide information to governmental agencies, member
276 operators affected by the extraordinary circumstances, and
277 member operators who can provide relief to the affected parties,
278 unless the system itself has been adversely affected by
279 extraordinary circumstances.

280 (9) (a) After receiving notification from the system, a

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281 member operator shall provide a positive response to the system
282 within 2 full business days, or 10 such days for an underwater
283 excavation, indicating the status of operations to protect the
284 facility.

285 ~~(8)(a) If a member operator determines that the excavation~~
286 ~~or demolition is not near an existing underground facility of~~
287 ~~the member operator, the member operator shall notify the~~
288 ~~excavator within 2 full business days after the time of the~~
289 ~~notification to the system that no conflict exists and that the~~
290 ~~excavation or demolition area is clear. An excavator who has~~
291 ~~knowledge of the existence of an underground facility of a~~
292 ~~member operator in the area is responsible for contacting the~~
293 ~~member operator if a facility is not marked.~~

294 (b) The system shall establish and maintain a process to
295 facilitate a positive-response communication between member
296 operators and excavators. The system is exempt from any
297 requirement to initiate a positive response to an excavator when
298 an excavator does not provide a valid electronic address to
299 facilitate a positive response by the system.

300 (c) An excavator shall verify the system's positive
301 responses before beginning excavation. If an excavator knows
302 that an existing underground facility of a member operator is in
303 the area, the excavator must contact the member operator if the
304 facility is not marked and a positive response has not been
305 received by the system. The system shall implement procedures
306 for positive response by January 1, 2004.

307 ~~(10)(9) A member operator shall use the recommended~~
308 ~~guidelines for uniform temporary marking of underground~~

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309 ~~facilities as approved by the Utility Location and Coordinating~~
310 ~~Council~~ "Uniform Color Code for Utilities" of the American
311 Public Works Association when marking the horizontal route of
312 any underground facility of the operator.

313 (11)~~(10)~~ Before ~~Prior to~~ or during excavation or
314 demolition, if the marking of the horizontal route of any
315 facility is removed or is no longer visible, the excavator shall
316 stop excavation or demolition activities in the vicinity of the
317 facility and shall notify the system to have the route remarked.

318 (12)~~(11)~~ If any contact with or damage to any pipe, cable,
319 or its protective covering, or any other underground facility
320 occurs, the excavator causing the contact or damage shall
321 immediately notify the member operator. Upon receiving notice,
322 the member operator shall send personnel to the location as soon
323 as possible to effect temporary or permanent repair of the
324 contact or damage. Until such time as the contact or damage has
325 been repaired, the excavator shall cease excavation or
326 demolition activities that may cause further damage to such
327 underground facility.

328 Section 6. Subsection (2) of section 556.106, Florida
329 Statutes, is amended, present subsection (6) is redesignated as
330 subsection (7) and amended, and a new subsection (6) is added to
331 that section, to read:

332 556.106 Liability of the member operator, excavator, and
333 system.--

334 (2) (a) If a ~~In the event~~ any person violates s. 556.105(1)
335 or (6) ~~(5)~~, and subsequently, whether by himself or herself or
336 through the person's employees, contractors, subcontractors, or

337 agents, performs an excavation or demolition that ~~which~~ damages
 338 an underground facility of a member operator, it is ~~shall be~~
 339 rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~
 340 person, if found liable, is ~~shall be~~ liable for the total sum of
 341 the losses to all member operators involved as those costs are
 342 normally computed. Any damage for loss of revenue and loss of
 343 use may ~~shall~~ not exceed \$500,000 per affected underground
 344 facility, except that revenues lost by a governmental member
 345 operator whose, ~~which~~ revenues are used to support payments on
 346 principal and interest on bonds may, ~~shall~~ not be limited. Any
 347 liability of the state and its agencies and its subdivisions
 348 which arises out of this chapter is ~~shall be~~ subject to the
 349 provisions of s. 768.28.

350 (b) If any excavator fails to discharge a duty imposed by
 351 the provisions of this act, the ~~such~~ excavator, if found liable,
 352 is ~~shall be~~ liable for the total sum of the losses to all
 353 parties involved as those costs are normally computed. Any
 354 damage for loss of revenue and loss of use may ~~shall~~ not exceed
 355 \$500,000 per affected underground facility, except that revenues
 356 lost by a governmental member operator whose, ~~which~~ revenues are
 357 used to support payments on principal and interest on bonds may,
 358 ~~shall~~ not be limited.

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

362 (d) Obtaining information as to the location of an
 363 underground facility from the member operator as required by
 364 this act does not excuse any excavator from performing an

365 excavation or demolition in a careful and prudent manner, based
 366 on accepted engineering and construction practices, and it ~~nor~~
 367 does not ~~it~~ excuse the ~~such~~ excavator from liability for any
 368 damage or injury resulting from any excavation or demolition.

369 ~~(e) When an excavator knows or should know of the presence~~
 370 ~~of an underground facility of a nonmember small city as defined~~
 371 ~~in s. 120.52, he or she shall make reasonable efforts to contact~~
 372 ~~the small city that owns or operates that facility prior to~~
 373 ~~commencing an excavation or demolition.~~

374 (6) The system does not have a duty to mark or locate
 375 underground facilities and may not do so, and a right of
 376 recovery does not exist against the system for failing to mark
 377 or locate underground facilities. The system is not liable for
 378 the failure of a member operator to comply with the requirements
 379 of this act.

380 ~~(7)(6)~~ An excavator who performs any excavation with hand
 381 tools under ~~pursuant to~~ s. 556.108(5) is liable for any damage
 382 to any operator's underground facilities damaged during such
 383 excavation.

384 Section 7. Section 556.107, Florida Statutes, is amended
 385 to read:

386 556.107 Violations.--

387 (1) NONCRIMINAL INFRACTIONS.--

388 (a) Violations of the following provisions are noncriminal
 389 infractions:

390 1. Section 556.105(1), relating to providing required
 391 information.

392 2. Section 556.105(6) ~~556.105(5)~~, relating to the

393 avoidance of excavation.

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

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

398 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to
 399 identification of underground facilities, if a member operator
 400 does not mark an underground facility, but not if a member
 401 operator marks an underground facility incorrectly.

402 (b) Any excavator or member operator who commits a
 403 noncriminal infraction under paragraph (a) may be issued a
 404 citation by any local or state law enforcement officer,
 405 government code inspector, or code enforcement officer
 406 ~~permitting agency inspector~~, and the issuer of a citation may
 407 require an ~~any~~ excavator to cease work on any excavation or not
 408 start a proposed excavation until there has been compliance with
 409 the provisions of this act. Citations may be issued to any
 410 employee of the excavator or member operator who is directly
 411 involved in the noncriminal infraction.

412 (c) Any excavator or member operator who commits a
 413 noncriminal infraction under paragraph (a) may be required to
 414 appear before the county court. The civil penalty for any such
 415 infraction is \$250, plus fees and court costs except as
 416 otherwise provided in this section. If a citation is issued by a
 417 local law enforcement officer, a local government code
 418 inspector, or a code enforcement officer, 80 percent of the
 419 civil penalty collected by the clerk of the court shall be
 420 distributed to the local governmental entity whose employee

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421 issued the citation and 20 percent of the penalty shall be
422 retained by the clerk to cover administrative costs, in addition
423 to other fees or court costs. If a citation is issued by a state
424 law enforcement officer, the civil penalty collected by the
425 clerk shall be retained by the clerk for distribution to the
426 county in which the citation was issued. Any person who fails to
427 appear or otherwise properly respond to a citation issued
428 pursuant to paragraph (d) shall, in addition to the citation, be
429 charged with the offense of failing to respond to such citation
430 and, upon conviction, commits ~~be guilty of~~ a misdemeanor of the
431 second degree, punishable as provided in s. 775.082 or s.
432 775.083. A written warning to this effect shall be provided at
433 the time any citation is issued pursuant to paragraph (b).

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

436 1. Post a bond, which shall be equal in amount to the
437 applicable civil penalty, plus fees or court costs; or

438 2. Sign and accept a citation indicating a promise to
439 appear before the county court.

440

441 The person issuing the citation ~~officer~~ may indicate on the
442 citation the time and location of the scheduled hearing and
443 shall indicate the applicable civil penalty.

444 (e) Any person charged with a noncriminal infraction under
445 paragraph (a), unless required to appear before the county
446 court, may:

447 1. Pay the civil penalty plus fees and court costs, in
448 lieu of appearance, either by mail or in person, within 10 days

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449 after the date of receiving the citation; or

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

452

453 If the person cited follows either of the above procedures, she
454 or he is ~~shall be~~ deemed to have admitted to committing the
455 infraction and to have waived the right to a hearing on the
456 issue of commission of the infraction. The ~~Such~~ admission may be
457 used as evidence in any other proceeding under this act.

458 (f) Any person electing to appear before the county court
459 or who is required to appear shall be deemed to have waived the
460 limitations on the civil penalty specified in paragraph (c). The
461 court, after a hearing, shall make a determination as to whether
462 an infraction has been committed. If the commission of an
463 infraction has been proven, the court may impose a civil penalty
464 not to exceed \$5,000, plus court costs. In determining the
465 amount of the civil penalty, the court may consider previous
466 noncriminal infractions committed.

467 (g) At a hearing under this chapter, the commission of a
468 charged infraction must be proven by a preponderance of the
469 evidence.

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

473 (i) Sunshine State One-Call of Florida, Inc., may, at its
474 own cost, retain an attorney to assist in the presentation of
475 relevant facts and law in the county court proceeding pertaining
476 to the citation issued under this section. The corporation may

477 also appear in any case appealed to the circuit court if a
 478 county court finds that an infraction of the chapter was
 479 committed. An appellant in the circuit court proceeding shall
 480 timely notify the corporation of any appeal under this section.

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

490 Section 8. Subsection (4) of section 556.108, Florida
 491 Statutes, is amended to read:

492 556.108 Exemptions.--The notification requirements
 493 provided in s. 556.105(1) do not apply to:

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

495 (a) Surveying public or private property by surveyors or
 496 mappers as defined in chapter 472, excluding marked rights-of-
 497 way, marked easements, or permitted uses where marked, if
 498 ~~provided~~ mechanized equipment is not used in the process of such
 499 surveying and the surveying is performed in accordance with the
 500 practice rules established under s. 472.027; ~~or~~

501 (b) Maintenance activities performed by a state agency and
 502 its employees when such activities are within the right-of-way
 503 of a public road; however, ~~provided,~~ if a member operator has
 504 permanently marked facilities on such right-of-way, ~~or~~

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505 mechanized equipment may not be used without first providing
506 notification; or

507 (c) Locating, repairing, connecting, adjusting, or routine
508 maintenance of a private or public utility facility by an
509 excavator, if mechanized equipment is not used.

510 Section 9. This act shall take effect October 1, 2006.