

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to damage prevention and safety for
7 underground facilities; amending s. 556.101, F.S.;
8 providing legislative intent that Sunshine State One-Call
9 of Florida, Inc., is not required or permitted to locate
10 or mark underground facilities; revising purposes of the
11 Underground Facility Damage Prevention and Safety Act;
12 amending s. 556.102, F.S.; correcting a reference;
13 redefining the term "member operator" to remove an
14 exception for a small municipality that elects not to
15 participate in the notification system; amending ss.
16 556.103 and 556.104, F.S.; deleting provisions exempting a
17 small city from membership in the Sunshine State One-Call
18 of Florida, Inc.; amending s. 556.105, F.S.; requiring
19 that specified information be placed in the excavation
20 notification system; providing an exception for underwater
21 excavations; providing that the information is valid for
22 30 calendar days; requiring that a notification number
23 assigned to an excavator be provided to a law enforcement

24 | officer, government code inspector, or code enforcement
25 | officer upon request; requiring that a member operator
26 | respond to the system within a specified time indicating
27 | the status of its facility protection operations;
28 | requiring the corporation to establish a communication
29 | system between member operators and excavators; requiring
30 | an excavator to verify the system's positive responses
31 | before beginning excavation; requiring operators to use a
32 | specified color-code manual; amending s. 556.106, F.S. ;
33 | providing that the notification system has no duty to and
34 | may not mark or locate underground facilities; providing
35 | that a person has no right of recovery against the
36 | notification system for failing to mark or locate
37 | underground facilities; providing that the system is not
38 | liable for the failure of a member operator to comply with
39 | the requirements of the act; amending s. 556.107, F.S. ;
40 | correcting cross-references; providing for the
41 | distribution of civil penalties; revising procedures for
42 | disposition of citations; authorizing the corporation to
43 | retain legal counsel to represent the corporation in
44 | certain legal proceedings; amending s. 556.108, F.S. ;
45 | revising provisions that exempt excavation or demolition
46 | by the owner of residential property from specified
47 | notification requirements to exclude certain property that
48 | is subdivided or to be subdivided; providing that certain
49 | excavations are exempt from mandatory location
50 | notification if mechanized equipment is not used;

HB 789 CS

2006
CS

51 | exempting pest control services under certain
52 | circumstances; providing an effective date.

53 |
54 | Be It Enacted by the Legislature of the State of Florida:

55 |
56 | Section 1. Section 556.101, Florida Statutes, is amended
57 | to read:

58 | 556.101 Short title; legislative intent.--

59 | (1) This chapter act may be cited as the "Underground
60 | Facility Damage Prevention and Safety Act."

61 | (2) It is the intent of the Legislature to provide access
62 | for excavating contractors and the public to provide
63 | notification to the system of their intent to engage in
64 | excavation or demolition. This notification system shall provide
65 | the member operators an opportunity to identify and locate their
66 | underground facilities. Under this notification system, Sunshine
67 | State One-Call of Florida, Inc., is not required or permitted to
68 | locate or mark underground facilities.

69 | (3) It is the purpose of this chapter act to:

70 | (a) Aid the public by preventing injury to persons or
71 | property and the interruption of services resulting from damage
72 | to an underground facility caused by excavation or demolition
73 | operations.

74 | (b) Create a not-for-profit corporation comprised of
75 | operators of underground facilities in this state to administer
76 | ~~the provisions of this chapter act.~~

77 | (c) Fund the cost of administration through contributions
78 | from the member operators for services provided to the member

79 operators and from charges made to others for services requested
80 and provided, such as record searches, education or training,
81 and damage prevention activities.

82 (d) Reserve to the state the power to regulate any subject
83 matter specifically addressed in this chapter act.

84 (e) Permit any local law enforcement officer, local
85 government code inspector, or code enforcement officer ~~or~~
86 ~~permitting agency inspector~~ to enforce this chapter act without
87 the need to incorporate the provisions of this chapter act into
88 any local code or ordinance.

89 (f) Foster the awareness of federal laws and regulations
90 that promote safety with respect to underground facilities,
91 including, but not limited to, the Federal Pipeline Safety Act
92 of 1968, as amended, the Pipeline Safety Improvement Act of
93 2002, OSHA Standard 1926.651, and the National Electric Safety
94 Code, ANSI C-2, by requiring and facilitating the advance notice
95 of activities by those who engage in excavation or demolition
96 operations.

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

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

102 556.102 Definitions.--As used in this act:

103 (8) "Member operator" means any person who furnishes or
104 transports materials or services by means of an underground
105 facility ~~except a small municipality that has elected not to~~

HB 789 CS

2006
CS

106 ~~participate in the one-call notification system in the manner~~
107 ~~set forth in s. 556.103(1).~~

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

110 556.103 Creation of the corporation; establishment of the
111 board of directors; authority of the board; annual report.--

112 (1) The "Sunshine State One-Call of Florida, Inc." is
113 ~~hereby~~ created as a not-for-profit corporation. Each operator of
114 an underground facility in this state shall be a member of the
115 corporation and shall use and participate in the system, ~~except~~
116 ~~that a small city as defined in s. 120.52 may elect by January~~
117 ~~1, 1998, not to participate in the system until January 1, 2003,~~
118 ~~through a written notification identifying any reasons for~~
119 ~~declining membership. The corporation shall be formed by June 1,~~
120 ~~1993.~~ The corporation shall administer the provisions of this
121 chapter ~~act~~. The corporation shall exercise its powers through a
122 board of directors established pursuant to this section.

123 Section 4. Section 556.104, Florida Statutes, is amended
124 to read:

125 556.104 Free-access notification system.--The corporation
126 shall maintain a free-access notification system. Any person who
127 furnishes or transports materials or services by means of an
128 underground facility in this state shall participate as a member
129 operator of the system ~~except that a small city as defined in s.~~
130 ~~120.52 may elect not to participate in the system in the manner~~
131 ~~set forth in s. 556.103(1).~~ The purpose of the system is to
132 receive notification of planned excavation or demolition
133 activities and to notify member operators of the ~~such~~ planned

HB 789 CS

2006
CS

134 excavation or demolition activities. The system shall provide a
 135 single toll-free telephone number within this state which
 136 excavators can use to notify member operators of planned
 137 excavation or demolition activities, and the system may also
 138 provide additional modes of access at no cost to the user.

139 Section 5. Section 556.105, Florida Statutes, is amended
 140 to read:

141 556.105 Procedures.--

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

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

149 2. The name and telephone number of the representative for
 150 the excavator, and a valid electronic address to facilitate a
 151 positive response by the system should be provided, if
 152 available.

153 3. The county, the city or closest city, and the street
 154 address or the closest street, road, or intersection to the
 155 location where the excavation or demolition is to be performed,
 156 and the construction limits of the excavation or demolition.

157 4. The commencement date and anticipated duration of the
 158 excavation or demolition.

159 5. Whether machinery will be used for the excavation or
 160 demolition.

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

162 7. The type of work to be done.

163 8. The approximate depth of the excavation.

164 (b) The excavator shall provide the ~~such~~ information by
 165 notifying the system through its free-access notification system
 166 during business hours, as determined by the corporation, or by
 167 such other method as authorized by the corporation. Any
 168 notification received by the system at any time other than
 169 during business hours shall be considered to be received at the
 170 beginning of the next business day.

171 (c) Information provided by an excavator is ~~shall be~~
 172 ~~considered~~ valid for 30 ~~a period of 20~~ calendar days after the
 173 ~~each~~ date such information is provided to the system. In
 174 computing the period for which information furnished is
 175 ~~considered~~ valid, the date the notice is provided is ~~shall~~ not
 176 be counted, but the last day of the ~~such~~ period shall be counted
 177 unless it is a Saturday, Sunday, or a legal holiday, in which
 178 event, the period runs ~~shall run~~ until the end of the next day
 179 that ~~which~~ is not a Saturday, Sunday, or a legal holiday.

180 (2) Each notification by means of the system shall be
 181 recorded to document compliance with this chapter ~~act~~. Such
 182 record may be made by means of electronic, mechanical, or any
 183 other method of all incoming and outgoing wire and oral
 184 communications concerning location requests in compliance with
 185 chapter 934. The ~~Such~~ records shall be kept for ~~a period of~~ 5
 186 years and, upon written request, shall be available to the
 187 excavator making the request, the member operator intended to
 188 receive the request, and their agents. However, custody of the

HB 789 CS

2006
CS

189 records may ~~shall~~ not be transferred from the system except
190 under subpoena.

191 (3) The system shall provide the person who provided
192 notification with the names of the member operators who shall
193 ~~will~~ be advised of the notification and a notification number
194 that ~~which~~ specifies the date and time of the notification.

195 (4) The notification number provided to the excavator
196 under this section shall be provided to any law enforcement
197 officer, government code inspector, or code enforcement officer
198 upon request.

199 (5)-(4) All member operators within the defined area of a
200 proposed excavation or demolition shall be promptly notified
201 through the system, except that member operators with state-
202 owned underground facilities located within the right-of-way of
203 a state highway need not be notified of excavation or demolition
204 activities and are under no obligation to mark or locate the
205 ~~such~~ facilities.

206 (a) When an excavation site cannot be described in
207 information provided under subparagraph (1)(a)3. with sufficient
208 particularity to enable the member operator to ascertain the
209 excavation site, and if the excavator and member operator have
210 not mutually agreed otherwise, the excavator shall premark the
211 proposed area of the excavation before a member operator is
212 required to identify the horizontal route of its underground
213 facilities in the proximity of any excavation. However,
214 premarking is not required for any excavation that is over 500
215 feet in length and is not required where the premarking could
216 reasonably interfere with traffic or pedestrian control.

HB 789 CS

2006
CS

217 (b) If a member operator determines that a proposed
218 excavation or demolition is in proximity to or in conflict with
219 an underground facility of the member operator, except a
220 facility beneath the waters of the state, which is governed by
221 paragraph (c), the member operator shall identify the horizontal
222 route by marking to within 24 inches from the outer edge of
223 either side of the underground facility by the use of stakes,
224 paint, flags, or other suitable means within 2 full business
225 days after the time the notification is received under
226 subsection (1). If the member operator is unable to respond
227 within such time, the member operator shall communicate with the
228 person making the request and negotiate a new schedule and time
229 that is agreeable to, and should not unreasonably delay, the
230 excavator.

231 (c) If a member operator determines that a proposed
232 excavation is in proximity to or in conflict with an underground
233 facility of the member operator beneath the waters of the state,
234 the member operator shall identify the estimated horizontal
235 route of the underground facility, within 10 business days,
236 using marking buoys or other suitable devices, unless directed
237 otherwise by an agency having jurisdiction over the waters of
238 the state under which the member operator's underground facility
239 is located.

240 (d) When excavation is to take place within a tolerance
241 zone, an excavator shall use increased caution to protect
242 underground facilities. The protection requires hand digging,
243 pot holing, soft digging, vacuum excavation methods, or other
244 similar procedures to identify underground facilities. Any use

HB 789 CS

2006
CS

245 of mechanized equipment within the tolerance zone must be
246 supervised by the excavator.

247 (6) (a) ~~(5) (a)~~ An excavator shall avoid excavation in the
248 area described in the notice given under ~~pursuant to~~ subsection
249 (1) until each member operator underground facility has been
250 marked and located or until the excavator has been notified that
251 no member operator has underground facilities in the area
252 described in the notice, or for the time allowed for markings
253 set forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), whichever occurs
254 first. If a member operator has not located and marked its
255 underground facilities within the time allowed for marking set
256 forth in paragraphs (5) (b) ~~(4) (b)~~ and (c), the excavator may
257 proceed with the excavation, if ~~if provided~~ the excavator does so
258 with reasonable care, and if provided, ~~further,~~ that detection
259 equipment or other acceptable means to locate underground
260 facilities are used.

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

265 (7) (a) ~~(6) (a)~~ A member operator that states that it does
266 not have accurate information concerning the exact location of
267 its underground facilities is exempt from the requirements of
268 paragraphs (5) (b) ~~(4) (b)~~ and (c), but shall provide the best
269 available information to the excavator in order to comply with
270 the requirements of this section. An excavator is not liable for
271 any damage to an underground facility under the exemption in
272 this subsection if the excavation or demolition is performed

HB 789 CS

2006
CS

273 | with reasonable care and detection equipment or other acceptable
274 | means to locate underground facilities are used.

275 | (b) A member operator may not exercise the exemption
276 | provided by this subsection if the member operator has
277 | underground facilities that have not been taken out of service
278 | and that are locatable using available designating technologies
279 | to locate underground facilities.

280 | (8) (a) (7) (a) If extraordinary circumstances exist, a
281 | member operator shall notify the system of the member operator's
282 | inability to comply with this section. For the purposes of this
283 | section, the term "extraordinary circumstances" means
284 | circumstances other than normal operating conditions that ~~which~~
285 | exist and make it impractical for a member operator to comply
286 | with ~~the provisions of this chapter act~~. After the system has
287 | received notification of a member operator's inability to
288 | comply, the system shall make that information known to
289 | excavators who subsequently notify the system of an intent to
290 | excavate. The member operator is relieved of responsibility for
291 | compliance under the law during the period that the
292 | extraordinary circumstances exist and shall promptly notify the
293 | system when the extraordinary circumstances cease to exist.

294 | (b) During the period when extraordinary circumstances
295 | exist, the system shall remain available during business hours
296 | to provide information to governmental agencies, member
297 | operators affected by the extraordinary circumstances, and
298 | member operators who can provide relief to the affected parties,
299 | unless the system itself has been adversely affected by
300 | extraordinary circumstances.

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

306 ~~(8) (a) If a member operator determines that the excavation~~
307 ~~or demolition is not near an existing underground facility of~~
308 ~~the member operator, the member operator shall notify the~~
309 ~~excavator within 2 full business days after the time of the~~
310 ~~notification to the system that no conflict exists and that the~~
311 ~~excavation or demolition area is clear. An excavator who has~~
312 ~~knowledge of the existence of an underground facility of a~~
313 ~~member operator in the area is responsible for contacting the~~
314 ~~member operator if a facility is not marked.~~

315 (b) The system shall establish and maintain a process to
316 facilitate a positive-response communication between member
317 operators and excavators. The system is exempt from any
318 requirement to initiate a positive response to an excavator when
319 an excavator does not provide a valid electronic address to
320 facilitate a positive response by the system.

321 (c) An excavator shall verify the system's positive
322 responses before beginning excavation. If an excavator knows
323 that an existing underground facility of a member operator is in
324 the area, the excavator must contact the member operator if the
325 facility is not marked and a positive response has not been
326 received by the system. ~~The system shall implement procedures~~
327 ~~for positive response by January 1, 2004.~~

HB 789 CS

2006
CS

328 (10)~~(9)~~ A member operator shall use the "Uniform Color
329 Code for Utilities" ~~recommended guidelines for uniform temporary~~
330 ~~marking of underground facilities as approved by the Utility~~
331 ~~Location and Coordinating Council~~ of the American Public Works
332 Association when marking the horizontal route of any underground
333 facility of the operator.

334 (11)~~(10)~~ Before ~~Prior to~~ or during excavation or
335 demolition, if the marking of the horizontal route of any
336 facility is removed or is no longer visible, the excavator shall
337 stop excavation or demolition activities in the vicinity of the
338 facility and shall notify the system to have the route remarked.

339 (12)~~(11)~~ If any contact with or damage to any pipe, cable,
340 or its protective covering, or any other underground facility
341 occurs, the excavator causing the contact or damage shall
342 immediately notify the member operator. Upon receiving notice,
343 the member operator shall send personnel to the location as soon
344 as possible to effect temporary or permanent repair of the
345 contact or damage. Until such time as the contact or damage has
346 been repaired, the excavator shall cease excavation or
347 demolition activities that may cause further damage to such
348 underground facility.

349 Section 6. Subsection (2) of section 556.106, Florida
350 Statutes, is amended, present subsection (6) is redesignated as
351 subsection (7) and amended, and a new subsection (6) is added to
352 that section, to read:

353 556.106 Liability of the member operator, excavator, and
354 system.--

HB 789 CS

2006
CS

355 (2) (a) If a ~~In the event any~~ person violates s. 556.105(1)
356 or (6) ~~(5)~~, and subsequently, whether by himself or herself or
357 through the person's employees, contractors, subcontractors, or
358 agents, performs an excavation or demolition that ~~which~~ damages
359 an underground facility of a member operator, it is ~~shall be~~
360 rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~
361 person, if found liable, is ~~shall be~~ liable for the total sum of
362 the losses to all member operators involved as those costs are
363 normally computed. Any damage for loss of revenue and loss of
364 use may ~~shall~~ not exceed \$500,000 per affected underground
365 facility, except that revenues lost by a governmental member
366 operator whose, ~~which~~ revenues are used to support payments on
367 principal and interest on bonds may, ~~shall~~ not be limited. Any
368 liability of the state and its agencies and its subdivisions
369 which arises out of this chapter is ~~shall be~~ subject to the
370 provisions of s. 768.28.

371 (b) If any excavator fails to discharge a duty imposed by
372 the provisions of this chapter ~~act~~, the ~~such~~ excavator, if found
373 liable, is ~~shall be~~ liable for the total sum of the losses to
374 all parties involved as those costs are normally computed. Any
375 damage for loss of revenue and loss of use may ~~shall~~ not exceed
376 \$500,000 per affected underground facility, except that revenues
377 lost by a governmental member operator whose, ~~which~~ revenues are
378 used to support payments on principal and interest on bonds may,
379 ~~shall~~ not be limited.

380 (c) Any liability of the state, its agencies, or its
381 subdivisions which arises out of this chapter ~~act~~ ~~shall be~~
382 subject to the provisions of s. 768.28.

HB 789 CS

2006
CS

383 (d) Obtaining information as to the location of an
384 underground facility from the member operator as required by
385 this chapter ~~act~~ does not excuse any excavator from performing
386 an excavation or demolition in a careful and prudent manner,
387 based on accepted engineering and construction practices, and it
388 ~~nor~~ does not ~~it~~ excuse the ~~such~~ excavator from liability for any
389 damage or injury resulting from any excavation or demolition.

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

395 (6) The system does not have a duty to mark or locate
396 underground facilities and may not do so, and a right of
397 recovery does not exist against the system for failing to mark
398 or locate underground facilities. The system is not liable for
399 the failure of a member operator to comply with the requirements
400 of this chapter.

401 (7)-(6) An excavator who performs any excavation with hand
402 tools under ~~pursuant to~~ s. 556.108(4)(c) or (5) is liable for
403 any damage to any operator's underground facilities damaged
404 during such excavation.

405 Section 7. Section 556.107, Florida Statutes, is amended
406 to read:

407 556.107 Violations.--

408 (1) NONCRIMINAL INFRACTIONS.--

409 (a) Violations of the following provisions are noncriminal
410 infractions:

411 1. Section 556.105(1), relating to providing required
412 information.

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

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

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

419 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to
420 identification of underground facilities, if a member operator
421 does not mark an underground facility, but not if a member
422 operator marks an underground facility incorrectly.

423 (b) Any excavator or member operator who commits a
424 noncriminal infraction under paragraph (a) may be issued a
425 citation by any local or state law enforcement officer,
426 government code inspector, or code enforcement officer
427 ~~permitting agency inspector~~, and the issuer of a citation may
428 require an ~~any~~ excavator to cease work on any excavation or not
429 start a proposed excavation until there has been compliance with
430 the provisions of this chapter act. Citations shall ~~may~~ be hand-
431 delivered ~~issued~~ to any employee of the excavator or member
432 operator who is ~~directly~~ involved in the noncriminal infraction.
433 The citation shall be issued in the name of the excavator or
434 member operator, whichever is applicable.

435 (c) Any excavator or member operator who commits a
436 noncriminal infraction under paragraph (a) may be required to
437 appear before the county court. The civil penalty for any such
438 infraction is \$250 plus court costs, except as otherwise

HB 789 CS

2006
CS

439 | provided in this section. If a citation is issued by a local law
440 | enforcement officer, a local government code inspector, or a
441 | code enforcement officer, 80 percent of the civil penalty
442 | collected by the clerk of the court shall be distributed to the
443 | local governmental entity whose employee issued the citation and
444 | 20 percent of the penalty shall be retained by the clerk to
445 | cover administrative costs, in addition to other court costs. If
446 | a citation is issued by a state law enforcement officer, the
447 | civil penalty collected by the clerk shall be retained by the
448 | clerk for deposit into the fine and forfeiture fund established
449 | pursuant to s. 142.01. Any person who fails to appear or
450 | otherwise properly respond to a citation issued pursuant to
451 | paragraph (d) shall, in addition to the citation, be charged
452 | with the offense of failing to respond to such citation and,
453 | upon conviction, commits ~~be guilty of~~ a misdemeanor of the
454 | second degree, punishable as provided in s. 775.082 or s.
455 | 775.083. A written warning to this effect shall be provided at
456 | the time any citation is issued pursuant to paragraph (b).

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

459 | 1. Post a bond, which shall be equal in amount to the
460 | applicable civil penalty plus court costs; or

461 | 2. Sign and accept a citation indicating a promise to
462 | appear before the county court.

463 |

464 | The person issuing the citation ~~officer~~ may indicate on the
465 | citation the time and location of the scheduled hearing and
466 | shall indicate the applicable civil penalty.

HB 789 CS

2006
CS

467 (e) Any person charged with a noncriminal infraction under
468 paragraph (a), unless required to appear before the county
469 court, may:

470 1. Pay the civil penalty plus court costs, in lieu of
471 appearance, either by mail or in person, within 30 ~~10~~ days after
472 the date of receiving the citation; or

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

475

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

481 (f) Any person electing to appear before the county court
482 or who is required to appear shall be deemed to have waived the
483 limitations on the civil penalty specified in paragraph (c). The
484 court, after a hearing, shall make a determination as to whether
485 an infraction has been committed. If the commission of an
486 infraction has been proven, the court may impose a civil penalty
487 not to exceed \$5,000 plus court costs. In determining the amount
488 of the civil penalty, the court may consider previous
489 noncriminal infractions committed.

490 (g) At a hearing under this chapter, the commission of a
491 charged infraction must be proven by a preponderance of the
492 evidence.

HB 789 CS

2006
CS

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

496 (i) Sunshine State One-Call of Florida, Inc., may, at its
497 own cost, retain an attorney to assist in the presentation of
498 relevant facts and law in the county court proceeding pertaining
499 to the citation issued under this section. The corporation may
500 also appear in any case appealed to the circuit court if a
501 county court finds that an infraction of the chapter was
502 committed. An appellant in the circuit court proceeding shall
503 timely notify the corporation of any appeal under this section.

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

513 Section 8. Subsections (1), (4), and (5) of section
514 556.108, Florida Statutes, are amended to read:

515 556.108 Exemptions.--The notification requirements
516 provided in s. 556.105(1) do not apply to:

517 (1) Any excavation or demolition performed by the owner of
518 a single-family residential property, not including property
519 that is subdivided or is to be subdivided into more than one
520 single-family residential property; or for such owner by a

521 member operator or an agent of a member operator when such
 522 excavation or demolition is made entirely on such land, and only
 523 up to a depth of 10 inches; provided due care is used and there
 524 is no encroachment on any member operator's right-of-way,
 525 easement, or permitted use.

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

527 (a) Surveying public or private property by surveyors or
 528 mappers as defined in chapter 472 and services performed by a
 529 pest control licensee under chapter 482, excluding marked
 530 rights-of-way, marked easements, or permitted uses where marked,
 531 if ~~provided~~ mechanized equipment is not used in the process of
 532 such surveying or pest control services and the surveying or
 533 pest control services ~~is~~ performed in accordance with the
 534 practice rules established under s. 472.027 or s. 482.051,
 535 respectively; ~~or~~

536 (b) Maintenance activities performed by a state agency and
 537 its employees when such activities are within the right-of-way
 538 of a public road; however, ~~provided~~, if a member operator has
 539 permanently marked facilities on such right-of-way, ~~no~~
 540 mechanized equipment may not be used without first providing
 541 notification; or

542 (c) Locating, repairing, connecting, adjusting, or routine
 543 maintenance of a private or public underground utility facility
 544 by an excavator, if the excavator is performing such work for
 545 the current owner or future owner of the underground facility
 546 and if mechanized equipment is not used.

547 (5) Any excavation with hand tools by a member operator or
 548 an agent of a member operator for:

HB 789 CS

2006
CS

549 (a) Locating, repairing, connecting, or protecting, or
550 routine maintenance of, the member operator's underground
551 facilities; or

552 (b) The extension of a member operator's underground
553 facilities onto the property of a person to be served by such
554 facilities.

555 ~~(c)~~ The exemption provided in this subsection ~~paragraphs~~
556 ~~(a) and (b)~~ is limited to excavations to a depth of 30 inches if
557 the right-of-way has permanently marked facilities of a company
558 other than the member operator or its agents performing the
559 excavation.

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