

CHAMBER ACTION

1 The Finance & Tax 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;
51 | exempting pest control services under certain

HB 789 CS

2006
CS

52 | circumstances; amending s. 556.111, F.S.; providing that
 53 | specified applicability provisions do not exempt a local
 54 | governmental member operator from specified provisions
 55 | that apply to the member operator; amending s. 337.401,
 56 | F.S.; correcting a cross-reference; providing an effective
 57 | date.

58

59 | Be It Enacted by the Legislature of the State of Florida:

60

61 | Section 1. Section 556.101, Florida Statutes, is amended
 62 | to read:

63 | 556.101 Short title; legislative intent.--

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

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

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

75 | (a) Aid the public by preventing injury to persons or
 76 | property and the interruption of services resulting from damage
 77 | to an underground facility caused by excavation or demolition
 78 | operations.

79 (b) Create a not-for-profit corporation comprised of
80 operators of underground facilities in this state to administer
81 ~~the provisions of this chapter act.~~

82 (c) Fund the cost of administration through contributions
83 from the member operators for services provided to the member
84 operators and from charges made to others for services requested
85 and provided, such as record searches, education or training,
86 and damage prevention activities.

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

89 (e) Permit any local law enforcement officer, local
90 government code inspector, or code enforcement officer ~~or~~
91 ~~permitting agency inspector~~ to enforce this chapter act without
92 the need to incorporate the provisions of this chapter act into
93 any local code or ordinance.

94 (f) Foster the awareness of federal laws and regulations
95 that promote safety with respect to underground facilities,
96 including, but not limited to, the Federal Pipeline Safety Act
97 of 1968, as amended, the Pipeline Safety Improvement Act of
98 2002, OSHA Standard 1926.651, and the National Electric Safety
99 Code, ANSI C-2, by requiring and facilitating the advance notice
100 of activities by those who engage in excavation or demolition
101 operations.

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

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

HB 789 CS

2006
CS

107 556.102 Definitions.--As used in this act:

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

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

115 556.103 Creation of the corporation; establishment of the
116 board of directors; authority of the board; annual report.--

117 (1) The "Sunshine State One-Call of Florida, Inc." is
118 ~~hereby~~ created as a not-for-profit corporation. Each operator of
119 an underground facility in this state shall be a member of the
120 corporation and shall use and participate in the system, ~~except~~
121 ~~that a small city as defined in s. 120.52 may elect by January~~
122 ~~1, 1998, not to participate in the system until January 1, 2003,~~
123 ~~through a written notification identifying any reasons for~~
124 ~~declining membership. The corporation shall be formed by June 1,~~
125 ~~1993.~~ The corporation shall administer the provisions of this
126 chapter ~~act~~. The corporation shall exercise its powers through a
127 board of directors established pursuant to this section.

128 Section 4. Section 556.104, Florida Statutes, is amended
129 to read:

130 556.104 Free-access notification system.--The corporation
131 shall maintain a free-access notification system. Any person who
132 furnishes or transports materials or services by means of an
133 underground facility in this state shall participate as a member
134 operator of the system ~~except that a small city as defined in s.~~

HB 789 CS

2006
CS

135 ~~120.52 may elect not to participate in the system in the manner~~
 136 ~~set forth in s. 556.103(1).~~ The purpose of the system is to
 137 receive notification of planned excavation or demolition
 138 activities and to notify member operators of the ~~such~~ planned
 139 excavation or demolition activities. The system shall provide a
 140 single toll-free telephone number within this state which
 141 excavators can use to notify member operators of planned
 142 excavation or demolition activities, and the system may also
 143 provide additional modes of access at no cost to the user.

144 Section 5. Section 556.105, Florida Statutes, is amended
 145 to read:

146 556.105 Procedures.--

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

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

154 2. The name and telephone number of the representative for
 155 the excavator, and a valid electronic address to facilitate a
 156 positive response by the system should be provided, if
 157 available.

158 3. The county, the city or closest city, and the street
 159 address or the closest street, road, or intersection to the
 160 location where the excavation or demolition is to be performed,
 161 and the construction limits of the excavation or demolition.

162 4. The commencement date and anticipated duration of the
163 excavation or demolition.

164 5. Whether machinery will be used for the excavation or
165 demolition.

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

167 7. The type of work to be done.

168 8. The approximate depth of the excavation.

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

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

185 (2) Each notification by means of the system shall be
186 recorded to document compliance with this chapter ~~act~~. Such
187 record may be made by means of electronic, mechanical, or any
188 other method of all incoming and outgoing wire and oral
189 communications concerning location requests in compliance with

190 chapter 934. The ~~Such~~ records shall be kept for a ~~period of~~ 5
 191 years and, upon written request, shall be available to the
 192 excavator making the request, the member operator intended to
 193 receive the request, and their agents. However, custody of the
 194 records may ~~shall~~ not be transferred from the system except
 195 under subpoena.

196 (3) The system shall provide the person who provided
 197 notification with the names of the member operators who shall
 198 ~~will~~ be advised of the notification and a notification number
 199 that ~~which~~ specifies the date and time of the notification.

200 (4) The notification number provided to the excavator
 201 under this section shall be provided to any law enforcement
 202 officer, government code inspector, or code enforcement officer
 203 upon request.

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

211 (a) When an excavation site cannot be described in
 212 information provided under subparagraph (1)(a)3. with sufficient
 213 particularity to enable the member operator to ascertain the
 214 excavation site, and if the excavator and member operator have
 215 not mutually agreed otherwise, the excavator shall premark the
 216 proposed area of the excavation before a member operator is
 217 required to identify the horizontal route of its underground

HB 789 CS

2006
CS

218 facilities in the proximity of any excavation. However,
219 premarking is not required for any excavation that is over 500
220 feet in length and is not required where the premarking could
221 reasonably interfere with traffic or pedestrian control.

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

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

HB 789 CS

2006
CS

245 (d) When excavation is to take place within a tolerance
246 zone, an excavator shall use increased caution to protect
247 underground facilities. The protection requires hand digging,
248 pot holing, soft digging, vacuum excavation methods, or other
249 similar procedures to identify underground facilities. Any use
250 of mechanized equipment within the tolerance zone must be
251 supervised by the excavator.

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

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

270 (7) (a) ~~(6) (a)~~ A member operator that states that it does
271 not have accurate information concerning the exact location of
272 its underground facilities is exempt from the requirements of

HB 789 CS

2006
CS

273 paragraphs (5) (b) ~~(4) (b)~~ and (c), but shall provide the best
274 available information to the excavator in order to comply with
275 the requirements of this section. An excavator is not liable for
276 any damage to an underground facility under the exemption in
277 this subsection if the excavation or demolition is performed
278 with reasonable care and detection equipment or other acceptable
279 means to locate underground facilities are used.

280 (b) A member operator may not exercise the exemption
281 provided by this subsection if the member operator has
282 underground facilities that have not been taken out of service
283 and that are locatable using available designating technologies
284 to locate underground facilities.

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

299 (b) During the period when extraordinary circumstances
300 exist, the system shall remain available during business hours

HB 789 CS

2006
CS

301 to provide information to governmental agencies, member
302 operators affected by the extraordinary circumstances, and
303 member operators who can provide relief to the affected parties,
304 unless the system itself has been adversely affected by
305 extraordinary circumstances.

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

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

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

326 (c) An excavator shall verify the system's positive
327 responses before beginning excavation. If an excavator knows
328 that an existing underground facility of a member operator is in

HB 789 CS

2006
CS

329 the area, the excavator must contact the member operator if the
330 facility is not marked and a positive response has not been
331 received by the system. The system shall implement procedures
332 for positive response by January 1, 2004.

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

339 (11)(10) Before ~~Prior to~~ or during excavation or
340 demolition, if the marking of the horizontal route of any
341 facility is removed or is no longer visible, the excavator shall
342 stop excavation or demolition activities in the vicinity of the
343 facility and shall notify the system to have the route remarked.

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

354 Section 6. Subsection (2) of section 556.106, Florida
355 Statutes, is amended, present subsection (6) is redesignated as

HB 789 CS

2006
CS

356 subsection (7) and amended, and a new subsection (6) is added to
357 that section, to read:

358 556.106 Liability of the member operator, excavator, and
359 system.--

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

376 (b) If any excavator fails to discharge a duty imposed by
377 the provisions of this chapter ~~act~~, the ~~such~~ excavator, if found
378 liable, is ~~shall be~~ liable for the total sum of the losses to
379 all parties involved as those costs are normally computed. Any
380 damage for loss of revenue and loss of use may ~~shall~~ not exceed
381 \$500,000 per affected underground facility, except that revenues
382 lost by a governmental member operator whose, ~~which~~ revenues are

HB 789 CS

2006
CS

383 used to support payments on principal and interest on bonds may
384 ~~shall~~ not be limited.

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

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

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

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

406 (7) ~~(6)~~ An excavator who performs any excavation with hand
407 tools under ~~pursuant to~~ s. 556.108 (4) (c) or (5) is liable for
408 any damage to any operator's underground facilities damaged
409 during such excavation.

410 Section 7. Section 556.107, Florida Statutes, is amended
411 to read:

412 556.107 Violations.--

413 (1) NONCRIMINAL INFRACTIONS.--

414 (a) Violations of the following provisions are noncriminal
415 infractions:

416 1. Section 556.105(1), relating to providing required
417 information.

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

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

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

424 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to
425 identification of underground facilities, if a member operator
426 does not mark an underground facility, but not if a member
427 operator marks an underground facility incorrectly.

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

HB 789 CS

2006
CS

438 The citation shall be issued in the name of the excavator or
439 member operator, whichever is applicable.

440 (c) Any excavator or member operator who commits a
441 noncriminal infraction under paragraph (a) may be required to
442 appear before the county court. The civil penalty for any such
443 infraction is \$250 plus court costs, except as otherwise
444 provided in this section. If a citation is issued by a local law
445 enforcement officer, a local government code inspector, or a
446 code enforcement officer, 80 percent of the civil penalty
447 collected by the clerk of the court shall be distributed to the
448 local governmental entity whose employee issued the citation and
449 20 percent of the penalty shall be retained by the clerk to
450 cover administrative costs, in addition to other court costs. If
451 a citation is issued by a state law enforcement officer, the
452 civil penalty collected by the clerk shall be retained by the
453 clerk for deposit into the fine and forfeiture fund established
454 pursuant to s. 142.01. Any person who fails to appear or
455 otherwise properly respond to a citation issued pursuant to
456 paragraph (d) shall, in addition to the citation, be charged
457 with the offense of failing to respond to such citation and,
458 upon conviction, commits ~~be guilty of~~ a misdemeanor of the
459 second degree, punishable as provided in s. 775.082 or s.
460 775.083. A written warning to this effect shall be provided at
461 the time any citation is issued pursuant to paragraph (b).

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

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

HB 789 CS

2006
CS

466 2. Sign and accept a citation indicating a promise to
467 appear before the county court.

468
469 The person issuing the citation ~~officer~~ may indicate on the
470 citation the time and location of the scheduled hearing and
471 shall indicate the applicable civil penalty.

472 (e) Any person charged with a noncriminal infraction under
473 paragraph (a), unless required to appear before the county
474 court, may:

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

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

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

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

493 of the civil penalty, the court may consider previous
494 noncriminal infractions committed.

495 (g) At a hearing under this chapter, the commission of a
496 charged infraction must be proven by a preponderance of the
497 evidence.

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

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

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

518 Section 8. Subsections (1), (4), and (5) of section
519 556.108, Florida Statutes, are amended to read:

HB 789 CS

2006
CS

520 556.108 Exemptions.--The notification requirements
521 provided in s. 556.105(1) do not apply to:

522 (1) Any excavation or demolition performed by the owner of
523 a single-family residential property, not including property
524 that is subdivided or is to be subdivided into more than one
525 single-family residential property; or for such owner by a
526 member operator or an agent of a member operator when such
527 excavation or demolition is made entirely on such land, and only
528 up to a depth of 10 inches; provided due care is used and there
529 is no encroachment on any member operator's right-of-way,
530 easement, or permitted use.

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

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

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

HB 789 CS

2006
CS

547 (c) Locating, repairing, connecting, adjusting, or routine
 548 maintenance of a private or public underground utility facility
 549 by an excavator, if the excavator is performing such work for
 550 the current owner or future owner of the underground facility
 551 and if mechanized equipment is not used.

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

554 1.-(a) Locating, repairing, connecting, or protecting, or
 555 routine maintenance of, the member operator's underground
 556 facilities; or

557 2.-(b) The extension of a member operator's underground
 558 facilities onto the property of a person to be served by such
 559 facilities.

560 (b)-(e) The exemption provided in this subsection
 561 paragraphs (a) and (b) is limited to excavations to a depth of
 562 30 inches if the right-of-way has permanently marked facilities
 563 of a company other than the member operator or its agents
 564 performing the excavation.

565 Section 9. Subsection (3) of section 556.111, Florida
 566 Statutes, is amended to read:

567 556.111 Applicability to existing law.--Nothing in this
 568 act shall be construed to:

569 (3) Preempt a governmental member operator from reasonable
 570 regulation of its right-of-way. This subsection does not exempt
 571 a municipality, county, district, or other local governmental
 572 member operator from the provisions of this chapter that apply
 573 to the member operator.

HB 789 CS

2006
CS

574 Section 10. Paragraph (c) of subsection (3) of section
575 337.401, Florida Statutes, is amended to read:

576 337.401 Use of right-of-way for utilities subject to
577 regulation; permit; fees.--

578 (3)

579 (c)1. It is the intention of the state to treat all
580 providers of communications services that use or occupy
581 municipal or charter county roads or rights-of-way for the
582 provision of communications services in a nondiscriminatory and
583 competitively neutral manner with respect to the payment of
584 permit fees. Certain providers of communications services have
585 been granted by general law the authority to offset permit fees
586 against franchise or other fees while other providers of
587 communications services have not been granted this authority. In
588 order to treat all providers of communications services in a
589 nondiscriminatory and competitively neutral manner with respect
590 to the payment of permit fees, each municipality and charter
591 county shall make an election under either sub-subparagraph a.
592 or sub-subparagraph b. and must inform the Department of Revenue
593 of the election by certified mail by July 16, 2001. Such
594 election shall take effect October 1, 2001.

595 a.(I) The municipality or charter county may require and
596 collect permit fees from any providers of communications
597 services that use or occupy municipal or county roads or rights-
598 of-way. All fees permitted under this sub-subparagraph must be
599 reasonable and commensurate with the direct and actual cost of
600 the regulatory activity, including issuing and processing
601 permits, plan reviews, physical inspection, and direct

HB 789 CS

2006
CS

602 administrative costs; must be demonstrable; and must be
603 equitable among users of the roads or rights-of-way. A fee
604 permitted under this sub-subparagraph may not: be offset against
605 the tax imposed under chapter 202; include the costs of roads or
606 rights-of-way acquisition or roads or rights-of-way rental;
607 include any general administrative, management, or maintenance
608 costs of the roads or rights-of-way; or be based on a percentage
609 of the value or costs associated with the work to be performed
610 on the roads or rights-of-way. In an action to recover amounts
611 due for a fee not permitted under this sub-subparagraph, the
612 prevailing party may recover court costs and attorney's fees at
613 trial and on appeal. In addition to the limitations set forth in
614 this section, a fee levied by a municipality or charter county
615 under this sub-subparagraph may not exceed \$100. However, permit
616 fees may not be imposed with respect to permits that may be
617 required for service drop lines not required to be noticed under
618 s. 556.108(5) (a)2. ~~(b)~~ or for any activity that does not require
619 the physical disturbance of the roads or rights-of-way or does
620 not impair access to or full use of the roads or rights-of-way.

621 (II) To ensure competitive neutrality among providers of
622 communications services, for any municipality or charter county
623 that elects to exercise its authority to require and collect
624 permit fees under this sub-subparagraph, the rate of the local
625 communications services tax imposed by such jurisdiction, as
626 computed under s. 202.20, shall automatically be reduced by a
627 rate of 0.12 percent.

628 b. Alternatively, the municipality or charter county may
629 elect not to require and collect permit fees from any provider

HB 789 CS

2006
CS

630 of communications services that uses or occupies municipal or
631 charter county roads or rights-of-way for the provision of
632 communications services; however, each municipality or charter
633 county that elects to operate under this sub-subparagraph
634 retains all authority to establish rules and regulations for
635 providers of communications services to use or occupy roads or
636 rights-of-way as provided in this section. If a municipality or
637 charter county elects to operate under this sub-subparagraph,
638 the total rate for the local communications services tax as
639 computed under s. 202.20 for that municipality or charter county
640 may be increased by ordinance or resolution by an amount not to
641 exceed a rate of 0.12 percent. If a municipality or charter
642 county elects to increase its rate effective October 1, 2001,
643 the municipality or charter county shall inform the department
644 of such increased rate by certified mail postmarked on or before
645 July 16, 2001.

646 c. A municipality or charter county that does not make an
647 election as provided for in this subparagraph shall be presumed
648 to have elected to operate under the provisions of sub-
649 subparagraph b.

650 2. Each noncharter county shall make an election under
651 either sub-subparagraph a. or sub-subparagraph b. and shall
652 inform the Department of Revenue of the election by certified
653 mail by July 16, 2001. Such election shall take effect October
654 1, 2001.

655 a. The noncharter county may elect to require and collect
656 permit fees from any providers of communications services that
657 use or occupy noncharter county roads or rights-of-way. All fees

HB 789 CS

2006
CS

658 | permitted under this sub-subparagraph must be reasonable and
659 | commensurate with the direct and actual cost of the regulatory
660 | activity, including issuing and processing permits, plan
661 | reviews, physical inspection, and direct administrative costs;
662 | must be demonstrable; and must be equitable among users of the
663 | roads or rights-of-way. A fee permitted under this sub-
664 | subparagraph may not: be offset against the tax imposed under
665 | chapter 202; include the costs of roads or rights-of-way
666 | acquisition or roads or rights-of-way rental; include any
667 | general administrative, management, or maintenance costs of the
668 | roads or rights-of-way; or be based on a percentage of the value
669 | or costs associated with the work to be performed on the roads
670 | or rights-of-way. In an action to recover amounts due for a fee
671 | not permitted under this sub-subparagraph, the prevailing party
672 | may recover court costs and attorney's fees at trial and on
673 | appeal. In addition to the limitations set forth in this
674 | section, a fee levied by a noncharter county under this sub-
675 | subparagraph may not exceed \$100. However, permit fees may not
676 | be imposed with respect to permits that may be required for
677 | service drop lines not required to be noticed under s.
678 | 556.108(5)(a)2. ~~(b)~~ or for any activity that does not require the
679 | physical disturbance of the roads or rights-of-way or does not
680 | impair access to or full use of the roads or rights-of-way.

681 | b. Alternatively, the noncharter county may elect not to
682 | require and collect permit fees from any provider of
683 | communications services that uses or occupies noncharter county
684 | roads or rights-of-way for the provision of communications
685 | services; however, each noncharter county that elects to operate

HB 789 CS

2006
CS

686 | under this sub-subparagraph shall retain all authority to
687 | establish rules and regulations for providers of communications
688 | services to use or occupy roads or rights-of-way as provided in
689 | this section. If a noncharter county elects to operate under
690 | this sub-subparagraph, the total rate for the local
691 | communications services tax as computed under s. 202.20 for that
692 | noncharter county may be increased by ordinance or resolution by
693 | an amount not to exceed a rate of 0.24 percent, to replace the
694 | revenue the noncharter county would otherwise have received from
695 | permit fees for providers of communications services. If a
696 | noncharter county elects to increase its rate effective October
697 | 1, 2001, the noncharter county shall inform the department of
698 | such increased rate by certified mail postmarked on or before
699 | July 16, 2001.

700 | c. A noncharter county that does not make an election as
701 | provided for in this subparagraph shall be presumed to have
702 | elected to operate under the provisions of sub-subparagraph b.

703 | 3. Except as provided in this paragraph, municipalities
704 | and counties retain all existing authority to require and
705 | collect permit fees from users or occupants of municipal or
706 | county roads or rights-of-way and to set appropriate permit fee
707 | amounts.

708 | Section 11. This act shall take effect October 1, 2006.