

CHAMBER ACTION

1 The Commerce Council 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; providing for a study of the feasibility
23 of zones where no notification is required; requiring a

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

52 notification if mechanized equipment is not used;
 53 exempting pest control services under certain
 54 circumstances; amending s. 556.111, F.S.; providing that
 55 specified applicability provisions do not exempt a local
 56 governmental member operator from specified provisions
 57 that apply to the member operator; amending s. 337.401,
 58 F.S.; correcting a cross-reference; providing an effective
 59 date.

60
 61 Be It Enacted by the Legislature of the State of Florida:

62
 63 Section 1. Section 556.101, Florida Statutes, is amended
 64 to read:

65 556.101 Short title; legislative intent.--

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

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

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

77 (a) Aid the public by preventing injury to persons or
 78 property and the interruption of services resulting from damage

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79 | to an underground facility caused by excavation or demolition
80 | operations.

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

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

89 | (d) Reserve to the state the power to regulate any subject
90 | matter specifically addressed in this chapter act.

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

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

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

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

109 556.102 Definitions.--As used in this act:

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

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

117 556.103 Creation of the corporation; establishment of the
118 board of directors; authority of the board; annual report.--

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

130 Section 4. Section 556.104, Florida Statutes, is amended
131 to read:

132 556.104 Free-access notification system.--The corporation
133 shall maintain a free-access notification system. Any person who
134 furnishes or transports materials or services by means of an

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

146 | Section 5. Section 556.105, Florida Statutes, is amended
147 | to read:

148 | 556.105 Procedures.--

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

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

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

160 | 3. The county, the city or closest city, and the street
161 | address or the closest street, road, or intersection to the

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162 location where the excavation or demolition is to be performed,
163 and the construction limits of the excavation or demolition.

164 4. The commencement date and anticipated duration of the
165 excavation or demolition.

166 5. Whether machinery will be used for the excavation or
167 demolition.

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

169 7. The type of work to be done.

170 8. The approximate depth of the excavation.

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

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

187 (d)1. The system shall study the feasibility of the
188 establishment or recognition of zones for the purpose of
189 allowing excavation within such zones to be undertaken without

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190 notice to the system as now required by this chapter when such
191 zones are:

192 a. In areas within which no underground facilities are
193 located.

194 b. Where permanent markings, permit and mapping systems,
195 and structural protection for underwater crossings are required
196 or in place.

197 c. For previously marked utilities on construction of one
198 or two family dwellings where the contractor remains in custody
199 and control of the building site for the duration of the
200 building permit.

201 2. The system shall report the results of the study to the
202 Legislature on or before February 1, 2007, along with
203 recommendations for further legislative action.

204 (2) Each notification by means of the system shall be
205 recorded to document compliance with this chapter ~~act~~. Such
206 record may be made by means of electronic, mechanical, or any
207 other method of all incoming and outgoing wire and oral
208 communications concerning location requests in compliance with
209 chapter 934. The ~~Such~~ records shall be kept for ~~a period of~~ 5
210 years and, upon written request, shall be available to the
211 excavator making the request, the member operator intended to
212 receive the request, and their agents. However, custody of the
213 records may ~~shall~~ not be transferred from the system except
214 under subpoena.

215 (3) The system shall provide the person who provided
216 notification with the names of the member operators who shall

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217 ~~will~~ be advised of the notification and a notification number
218 ~~that~~ ~~which~~ specifies the date and time of the notification.

219 (4) The notification number provided to the excavator
220 under this section shall be provided to any law enforcement
221 officer, government code inspector, or code enforcement officer
222 upon request.

223 (5)~~(4)~~ All member operators within the defined area of a
224 proposed excavation or demolition shall be promptly notified
225 through the system, except that member operators with state-
226 owned underground facilities located within the right-of-way of
227 a state highway need not be notified of excavation or demolition
228 activities and are under no obligation to mark or locate the
229 ~~such~~ facilities.

230 (a) When an excavation site cannot be described in
231 information provided under subparagraph (1)(a)3. with sufficient
232 particularity to enable the member operator to ascertain the
233 excavation site, and if the excavator and member operator have
234 not mutually agreed otherwise, the excavator shall premark the
235 proposed area of the excavation before a member operator is
236 required to identify the horizontal route of its underground
237 facilities in the proximity of any excavation. However,
238 premarking is not required for any excavation that is over 500
239 feet in length and is not required where the premarking could
240 reasonably interfere with traffic or pedestrian control.

241 (b) If a member operator determines that a proposed
242 excavation or demolition is in proximity to or in conflict with
243 an underground facility of the member operator, except a
244 facility beneath the waters of the state, which is governed by

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245 paragraph (c), the member operator shall identify the horizontal
246 route by marking to within 24 inches from the outer edge of
247 either side of the underground facility by the use of stakes,
248 paint, flags, or other suitable means within 2 full business
249 days after the time the notification is received under
250 subsection (1). If the member operator is unable to respond
251 within such time, the member operator shall communicate with the
252 person making the request and negotiate a new schedule and time
253 that is agreeable to, and should not unreasonably delay, the
254 excavator.

255 (c) If a member operator determines that a proposed
256 excavation is in proximity to or in conflict with an underground
257 facility of the member operator beneath the waters of the state,
258 the member operator shall identify the estimated horizontal
259 route of the underground facility, within 10 business days,
260 using marking buoys or other suitable devices, unless directed
261 otherwise by an agency having jurisdiction over the waters of
262 the state under which the member operator's underground facility
263 is located.

264 (d) When excavation is to take place within a tolerance
265 zone, an excavator shall use increased caution to protect
266 underground facilities. The protection requires hand digging,
267 pot holing, soft digging, vacuum excavation methods, or other
268 similar procedures to identify underground facilities. Any use
269 of mechanized equipment within the tolerance zone must be
270 supervised by the excavator.

271 (6) (a) ~~(5) (a)~~ An excavator shall avoid excavation in the
272 area described in the notice given under ~~pursuant to~~ subsection

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273 (1) until each member operator underground facility has been
274 marked and located or until the excavator has been notified that
275 no member operator has underground facilities in the area
276 described in the notice, or for the time allowed for markings
277 set forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), whichever occurs
278 first. If a member operator has not located and marked its
279 underground facilities within the time allowed for marking set
280 forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), the excavator may
281 proceed with the excavation, if ~~provided~~ the excavator does so
282 with reasonable care, and if ~~provided, further, that~~ detection
283 equipment or other acceptable means to locate underground
284 facilities are used.

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

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

299 (b) A member operator may not exercise the exemption
300 provided by this subsection if the member operator has

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301 | underground facilities that have not been taken out of service
302 | and that are locatable using available designating technologies
303 | to locate underground facilities.

304 | (8) (a) ~~(7) (a)~~ If extraordinary circumstances exist, a
305 | member operator shall notify the system of the member operator's
306 | inability to comply with this section. For the purposes of this
307 | section, the term "extraordinary circumstances" means
308 | circumstances other than normal operating conditions that ~~which~~
309 | exist and make it impractical for a member operator to comply
310 | with ~~the provisions of this chapter act~~. After the system has
311 | received notification of a member operator's inability to
312 | comply, the system shall make that information known to
313 | excavators who subsequently notify the system of an intent to
314 | excavate. The member operator is relieved of responsibility for
315 | compliance under the law during the period that the
316 | extraordinary circumstances exist and shall promptly notify the
317 | system when the extraordinary circumstances cease to exist.

318 | (b) During the period when extraordinary circumstances
319 | exist, the system shall remain available during business hours
320 | to provide information to governmental agencies, member
321 | operators affected by the extraordinary circumstances, and
322 | member operators who can provide relief to the affected parties,
323 | unless the system itself has been adversely affected by
324 | extraordinary circumstances.

325 | (9) (a) After receiving notification from the system, a
326 | member operator shall provide a positive response to the system
327 | within 2 full business days, or 10 such days for an underwater

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328 excavation, indicating the status of operations to protect the
329 facility.

330 ~~(8)(a) If a member operator determines that the excavation~~
331 ~~or demolition is not near an existing underground facility of~~
332 ~~the member operator, the member operator shall notify the~~
333 ~~excavator within 2 full business days after the time of the~~
334 ~~notification to the system that no conflict exists and that the~~
335 ~~excavation or demolition area is clear. An excavator who has~~
336 ~~knowledge of the existence of an underground facility of a~~
337 ~~member operator in the area is responsible for contacting the~~
338 ~~member operator if a facility is not marked.~~

339 (b) The system shall establish and maintain a process to
340 facilitate a positive-response communication between member
341 operators and excavators. The system is exempt from any
342 requirement to initiate a positive response to an excavator when
343 an excavator does not provide a valid electronic address to
344 facilitate a positive response by the system.

345 (c) An excavator shall verify the system's positive
346 responses before beginning excavation. If an excavator knows
347 that an existing underground facility of a member operator is in
348 the area, the excavator must contact the member operator if the
349 facility is not marked and a positive response has not been
350 received by the system. The system shall implement procedures
351 for positive response by January 1, 2004.

352 ~~(10)(9)~~ A member operator shall use the "Uniform Color
353 Code for Utilities" ~~recommended guidelines for uniform temporary~~
354 ~~marking of underground facilities as approved by the Utility~~
355 ~~Location and Coordinating Council of the American Public Works~~

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356 Association when marking the horizontal route of any underground
357 facility of the operator.

358 (11)~~(10)~~ Before ~~Prior to~~ or during excavation or
359 demolition, if the marking of the horizontal route of any
360 facility is removed or is no longer visible, the excavator shall
361 stop excavation or demolition activities in the vicinity of the
362 facility and shall notify the system to have the route remarked.

363 (12)~~(11)~~ If any contact with or damage to any pipe, cable,
364 or its protective covering, or any other underground facility
365 occurs, the excavator causing the contact or damage shall
366 immediately notify the member operator. Upon receiving notice,
367 the member operator shall send personnel to the location as soon
368 as possible to effect temporary or permanent repair of the
369 contact or damage. Until such time as the contact or damage has
370 been repaired, the excavator shall cease excavation or
371 demolition activities that may cause further damage to such
372 underground facility.

373 Section 6. Subsection (2) of section 556.106, Florida
374 Statutes, is amended, present subsection (6) is redesignated as
375 subsection (7) and amended, and a new subsection (6) is added to
376 that section, to read:

377 556.106 Liability of the member operator, excavator, and
378 system.--

379 (2) (a) If a ~~In the event any~~ person violates s. 556.105(1)
380 or (6)~~(5)~~, and subsequently, whether by himself or herself or
381 through the person's employees, contractors, subcontractors, or
382 agents, performs an excavation or demolition that ~~which~~ damages
383 an underground facility of a member operator, it is ~~shall be~~

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384 | rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~
385 | person, if found liable, is ~~shall be~~ liable for the total sum of
386 | the losses to all member operators involved as those costs are
387 | normally computed. Any damage for loss of revenue and loss of
388 | use may ~~shall~~ not exceed \$500,000 per affected underground
389 | facility, except that revenues lost by a governmental member
390 | operator whose, ~~which~~ revenues are used to support payments on
391 | principal and interest on bonds may, ~~shall~~ not be limited. Any
392 | liability of the state and its agencies and its subdivisions
393 | which arises out of this chapter is ~~shall be~~ subject to the
394 | provisions of s. 768.28.

395 | (b) If any excavator fails to discharge a duty imposed by
396 | the provisions of this chapter ~~act~~, the ~~such~~ excavator, if found
397 | liable, is ~~shall be~~ liable for the total sum of the losses to
398 | all parties involved as those costs are normally computed. Any
399 | damage for loss of revenue and loss of use may ~~shall~~ not exceed
400 | \$500,000 per affected underground facility, except that revenues
401 | lost by a governmental member operator whose, ~~which~~ revenues are
402 | used to support payments on principal and interest on bonds may,
403 | ~~shall~~ not be limited.

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

407 | (d) Obtaining information as to the location of an
408 | underground facility from the member operator as required by
409 | this chapter ~~act~~ does not excuse any excavator from performing
410 | an excavation or demolition in a careful and prudent manner,
411 | based on accepted engineering and construction practices, and it

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412 ~~nor~~ does not ~~it~~ excuse the ~~such~~ excavator from liability for any
413 damage or injury resulting from any excavation or demolition.

414 ~~(c) When an excavator knows or should know of the presence~~
415 ~~of an underground facility of a nonmember small city as defined~~
416 ~~in s. 120.52, he or she shall make reasonable efforts to contact~~
417 ~~the small city that owns or operates that facility prior to~~
418 ~~commencing an excavation or demolition.~~

419 (6) The system does not have a duty to mark or locate
420 underground facilities and may not do so, and a right of
421 recovery does not exist against the system for failing to mark
422 or locate underground facilities. The system is not liable for
423 the failure of a member operator to comply with the requirements
424 of this chapter.

425 (7)~~(6)~~ An excavator who performs any excavation with hand
426 tools under ~~pursuant to~~ s. 556.108(4)(c) or (5) is liable for
427 any damage to any operator's underground facilities damaged
428 during such excavation.

429 Section 7. Section 556.107, Florida Statutes, is amended
430 to read:

431 556.107 Violations.--

432 (1) NONCRIMINAL INFRACTIONS.--

433 (a) Violations of the following provisions are noncriminal
434 infractions:

435 1. Section 556.105(1), relating to providing required
436 information.

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

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

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

443 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to
444 identification of underground facilities, if a member operator
445 does not mark an underground facility, but not if a member
446 operator marks an underground facility incorrectly.

447 (b) Any excavator or member operator who commits a
448 noncriminal infraction under paragraph (a) may be issued a
449 citation by any local or state law enforcement officer,
450 government code inspector, or code enforcement officer
451 ~~permitting agency inspector~~, and the issuer of a citation may
452 require an ~~any~~ excavator to cease work on any excavation or not
453 start a proposed excavation until there has been compliance with
454 the provisions of this chapter act. Citations shall ~~may~~ be hand-
455 delivered ~~issued~~ to any employee of the excavator or member
456 operator who is ~~directly~~ involved in the noncriminal infraction.
457 The citation shall be issued in the name of the excavator or
458 member operator, whichever is applicable.

459 (c) Any excavator or member operator who commits a
460 noncriminal infraction under paragraph (a) may be required to
461 appear before the county court. The civil penalty for any such
462 infraction is \$250 plus court costs, except as otherwise
463 provided in this section. If a citation is issued by a local law
464 enforcement officer, a local government code inspector, or a
465 code enforcement officer, 80 percent of the civil penalty
466 collected by the clerk of the court shall be distributed to the

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467 local governmental entity whose employee issued the citation and
468 20 percent of the penalty shall be retained by the clerk to
469 cover administrative costs, in addition to other court costs. If
470 a citation is issued by a state law enforcement officer, the
471 civil penalty collected by the clerk shall be retained by the
472 clerk for deposit into the fine and forfeiture fund established
473 pursuant to s. 142.01. Any person who fails to appear or
474 otherwise properly respond to a citation issued pursuant to
475 paragraph (d) shall, in addition to the citation, be charged
476 with the offense of failing to respond to such citation and,
477 upon conviction, commits ~~be guilty of~~ a misdemeanor of the
478 second degree, punishable as provided in s. 775.082 or s.
479 775.083. A written warning to this effect shall be provided at
480 the time any citation is issued pursuant to paragraph (b).

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

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

485 2. Sign and accept a citation indicating a promise to
486 appear before the county court.

487
488 The person issuing the citation ~~officer~~ may indicate on the
489 citation the time and location of the scheduled hearing and
490 shall indicate the applicable civil penalty.

491 (e) Any person charged with a noncriminal infraction under
492 paragraph (a), unless required to appear before the county
493 court, may:

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

499
 500 If the person cited follows either of the above procedures, she
 501 or he is ~~shall be~~ deemed to have admitted to committing the
 502 infraction and to have waived the right to a hearing on the
 503 issue of commission of the infraction. The ~~Such~~ admission may be
 504 used as evidence in any other proceeding under this chapter act.

505 (f) Any person electing to appear before the county court
 506 or who is required to appear shall be deemed to have waived the
 507 limitations on the civil penalty specified in paragraph (c). The
 508 court, after a hearing, shall make a determination as to whether
 509 an infraction has been committed. If the commission of an
 510 infraction has been proven, the court may impose a civil penalty
 511 not to exceed \$5,000 plus court costs. In determining the amount
 512 of the civil penalty, the court may consider previous
 513 noncriminal infractions committed.

514 (g) At a hearing under this chapter, the commission of a
 515 charged infraction must be proven by a preponderance of the
 516 evidence.

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

520 (i) Sunshine State One-Call of Florida, Inc., may, at its
 521 own cost, retain an attorney to assist in the presentation of

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522 relevant facts and law in the county court proceeding pertaining
523 to the citation issued under this section. The corporation may
524 also appear in any case appealed to the circuit court if a
525 county court finds that an infraction of the chapter was
526 committed. An appellant in the circuit court proceeding shall
527 timely notify the corporation of any appeal under this section.

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

537 Section 8. Subsections (1), (4), and (5) of section
538 556.108, Florida Statutes, are amended to read:

539 556.108 Exemptions.--The notification requirements
540 provided in s. 556.105(1) do not apply to:

541 (1) Any excavation or demolition performed by the owner of
542 a single-family residential property, not including property
543 that is subdivided or is to be subdivided into more than one
544 single-family residential property; or for such owner by a
545 member operator or an agent of a member operator when such
546 excavation or demolition is made entirely on such land, and only
547 up to a depth of 10 inches; provided due care is used and there
548 is no encroachment on any member operator's right-of-way,
549 easement, or permitted use.

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

551 (a) Surveying public or private property by surveyors or
552 mappers as defined in chapter 472 and services performed by a
553 pest control licensee under chapter 482, excluding marked
554 rights-of-way, marked easements, or permitted uses where marked,
555 if provided mechanized equipment is not used in the process of
556 such surveying or pest control services and the surveying or
557 pest control services are ~~is~~ performed in accordance with the
558 practice rules established under s. 472.027 or s. 482.051,
559 respectively; or

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

566 (c) Locating, repairing, connecting, adjusting, or routine
567 maintenance of a private or public underground utility facility
568 by an excavator, if the excavator is performing such work for
569 the current owner or future owner of the underground facility
570 and if mechanized equipment is not used.

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

573 1. (a) Locating, repairing, connecting, or protecting, or
574 routine maintenance of, the member operator's underground
575 facilities; or

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576 ~~2.(b)~~ The extension of a member operator's underground
577 facilities onto the property of a person to be served by such
578 facilities.

579 ~~(b)(e)~~ The exemption provided in this subsection
580 ~~paragraphs (a) and (b)~~ is limited to excavations to a depth of
581 30 inches if the right-of-way has permanently marked facilities
582 of a company other than the member operator or its agents
583 performing the excavation.

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

586 556.111 Applicability to existing law.--Nothing in this
587 act shall be construed to:

588 (3) Preempt a governmental member operator from reasonable
589 regulation of its right-of-way. This subsection does not exempt
590 a municipality, county, district, or other local governmental
591 member operator from the provisions of this chapter that apply
592 to the member operator.

593 Section 10. Paragraph (c) of subsection (3) of section
594 337.401, Florida Statutes, is amended to read:

595 337.401 Use of right-of-way for utilities subject to
596 regulation; permit; fees.--

597 (3)

598 (c)1. It is the intention of the state to treat all
599 providers of communications services that use or occupy
600 municipal or charter county roads or rights-of-way for the
601 provision of communications services in a nondiscriminatory and
602 competitively neutral manner with respect to the payment of
603 permit fees. Certain providers of communications services have

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604 | been granted by general law the authority to offset permit fees
605 | against franchise or other fees while other providers of
606 | communications services have not been granted this authority. In
607 | order to treat all providers of communications services in a
608 | nondiscriminatory and competitively neutral manner with respect
609 | to the payment of permit fees, each municipality and charter
610 | county shall make an election under either sub-subparagraph a.
611 | or sub-subparagraph b. and must inform the Department of Revenue
612 | of the election by certified mail by July 16, 2001. Such
613 | election shall take effect October 1, 2001.

614 | a.(I) The municipality or charter county may require and
615 | collect permit fees from any providers of communications
616 | services that use or occupy municipal or county roads or rights-
617 | of-way. All fees permitted under this sub-subparagraph must be
618 | reasonable and commensurate with the direct and actual cost of
619 | the regulatory activity, including issuing and processing
620 | permits, plan reviews, physical inspection, and direct
621 | administrative costs; must be demonstrable; and must be
622 | equitable among users of the roads or rights-of-way. A fee
623 | permitted under this sub-subparagraph may not: be offset against
624 | the tax imposed under chapter 202; include the costs of roads or
625 | rights-of-way acquisition or roads or rights-of-way rental;
626 | include any general administrative, management, or maintenance
627 | costs of the roads or rights-of-way; or be based on a percentage
628 | of the value or costs associated with the work to be performed
629 | on the roads or rights-of-way. In an action to recover amounts
630 | due for a fee not permitted under this sub-subparagraph, the
631 | prevailing party may recover court costs and attorney's fees at

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632 trial and on appeal. In addition to the limitations set forth in
633 this section, a fee levied by a municipality or charter county
634 under this sub-subparagraph may not exceed \$100. However, permit
635 fees may not be imposed with respect to permits that may be
636 required for service drop lines not required to be noticed under
637 s. 556.108(5) (a)2.~~(b)~~ or for any activity that does not require
638 the physical disturbance of the roads or rights-of-way or does
639 not impair access to or full use of the roads or rights-of-way.

640 (II) To ensure competitive neutrality among providers of
641 communications services, for any municipality or charter county
642 that elects to exercise its authority to require and collect
643 permit fees under this sub-subparagraph, the rate of the local
644 communications services tax imposed by such jurisdiction, as
645 computed under s. 202.20, shall automatically be reduced by a
646 rate of 0.12 percent.

647 b. Alternatively, the municipality or charter county may
648 elect not to require and collect permit fees from any provider
649 of communications services that uses or occupies municipal or
650 charter county roads or rights-of-way for the provision of
651 communications services; however, each municipality or charter
652 county that elects to operate under this sub-subparagraph
653 retains all authority to establish rules and regulations for
654 providers of communications services to use or occupy roads or
655 rights-of-way as provided in this section. If a municipality or
656 charter county elects to operate under this sub-subparagraph,
657 the total rate for the local communications services tax as
658 computed under s. 202.20 for that municipality or charter county
659 may be increased by ordinance or resolution by an amount not to

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660 exceed a rate of 0.12 percent. If a municipality or charter
661 county elects to increase its rate effective October 1, 2001,
662 the municipality or charter county shall inform the department
663 of such increased rate by certified mail postmarked on or before
664 July 16, 2001.

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

669 2. Each noncharter county shall make an election under
670 either sub-subparagraph a. or sub-subparagraph b. and shall
671 inform the Department of Revenue of the election by certified
672 mail by July 16, 2001. Such election shall take effect October
673 1, 2001.

674 a. The noncharter county may elect to require and collect
675 permit fees from any providers of communications services that
676 use or occupy noncharter county roads or rights-of-way. All fees
677 permitted under this sub-subparagraph must be reasonable and
678 commensurate with the direct and actual cost of the regulatory
679 activity, including issuing and processing permits, plan
680 reviews, physical inspection, and direct administrative costs;
681 must be demonstrable; and must be equitable among users of the
682 roads or rights-of-way. A fee permitted under this sub-
683 subparagraph may not: be offset against the tax imposed under
684 chapter 202; include the costs of roads or rights-of-way
685 acquisition or roads or rights-of-way rental; include any
686 general administrative, management, or maintenance costs of the
687 roads or rights-of-way; or be based on a percentage of the value

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688 or costs associated with the work to be performed on the roads
689 or rights-of-way. In an action to recover amounts due for a fee
690 not permitted under this sub-subparagraph, the prevailing party
691 may recover court costs and attorney's fees at trial and on
692 appeal. In addition to the limitations set forth in this
693 section, a fee levied by a noncharter county under this sub-
694 subparagraph may not exceed \$100. However, permit fees may not
695 be imposed with respect to permits that may be required for
696 service drop lines not required to be noticed under s.
697 556.108(5) (a)2.~~(b)~~ or for any activity that does not require the
698 physical disturbance of the roads or rights-of-way or does not
699 impair access to or full use of the roads or rights-of-way.

700 b. Alternatively, the noncharter county may elect not to
701 require and collect permit fees from any provider of
702 communications services that uses or occupies noncharter county
703 roads or rights-of-way for the provision of communications
704 services; however, each noncharter county that elects to operate
705 under this sub-subparagraph shall retain all authority to
706 establish rules and regulations for providers of communications
707 services to use or occupy roads or rights-of-way as provided in
708 this section. If a noncharter county elects to operate under
709 this sub-subparagraph, the total rate for the local
710 communications services tax as computed under s. 202.20 for that
711 noncharter county may be increased by ordinance or resolution by
712 an amount not to exceed a rate of 0.24 percent, to replace the
713 revenue the noncharter county would otherwise have received from
714 permit fees for providers of communications services. If a
715 noncharter county elects to increase its rate effective October

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716 | 1, 2001, the noncharter county shall inform the department of
717 | such increased rate by certified mail postmarked on or before
718 | July 16, 2001.

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

722 | 3. Except as provided in this paragraph, municipalities
723 | and counties retain all existing authority to require and
724 | collect permit fees from users or occupants of municipal or
725 | county roads or rights-of-way and to set appropriate permit fee
726 | amounts.

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