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HB 789, Engrossed 1

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1 A bill to be entitled

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

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28 excavators; requiring an excavator to verify the system's
29 positive responses before beginning excavation; requiring
30 operators to use a specified color-code manual; amending
31 s. 556.106, F.S.; providing that the notification system
32 has no duty to and may not mark or locate underground
33 facilities; providing that a person has no right of
34 recovery against the notification system for failing to
35 mark or locate underground facilities; providing that the
36 system is not liable for the failure of a member operator
37 to comply with the requirements of the act; amending s.
38 556.107, F.S.; correcting cross-references; providing for
39 the distribution of civil penalties; revising procedures
40 for disposition of citations; authorizing the corporation
41 to retain legal counsel to represent the corporation in
42 certain legal proceedings; amending s. 556.108, F.S.;
43 revising provisions that exempt excavation or demolition
44 by the owner of residential property from specified
45 notification requirements to exclude certain property that
46 is subdivided or to be subdivided; providing that certain
47 excavations are exempt from mandatory location
48 notification if mechanized equipment is not used;
49 exempting pest control services under certain
50 circumstances; amending s. 556.111, F.S.; providing that
51 specified applicability provisions do not exempt a local
52 governmental member operator from specified provisions
53 that apply to the member operator; amending s. 337.401,

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54 F.S.; correcting a cross-reference; providing an effective
 55 date.

56
 57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. Section 556.101, Florida Statutes, is amended
 60 to read:

61 556.101 Short title; legislative intent.--

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

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

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

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

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

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

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

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

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

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

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

105 556.102 Definitions.--As used in this act:

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

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

113 556.103 Creation of the corporation; establishment of the
 114 board of directors; authority of the board; annual report.--

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

126 Section 4. Section 556.104, Florida Statutes, is amended
 127 to read:

128 556.104 Free-access notification system.--The corporation
 129 shall maintain a free-access notification system. Any person who
 130 furnishes or transports materials or services by means of an
 131 underground facility in this state shall participate as a member
 132 operator of the system ~~except that a small city as defined in s.~~

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133 | ~~120.52 may elect not to participate in the system in the manner~~
 134 | ~~set forth in s. 556.103(1)~~. The purpose of the system is to
 135 | receive notification of planned excavation or demolition
 136 | activities and to notify member operators of the ~~such~~ planned
 137 | excavation or demolition activities. The system shall provide a
 138 | single toll-free telephone number within this state which
 139 | excavators can use to notify member operators of planned
 140 | excavation or demolition activities, and the system may also
 141 | provide additional modes of access at no cost to the user.

142 | Section 5. Section 556.105, Florida Statutes, is amended
 143 | to read:

144 | 556.105 Procedures.--

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

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

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

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

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160 4. The commencement date and anticipated duration of the
 161 excavation or demolition.

162 5. Whether machinery will be used for the excavation or
 163 demolition.

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

165 7. The type of work to be done.

166 8. The approximate depth of the excavation.

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

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

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

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186 notice to the system as now required by this chapter when such
 187 zones are:

188 a. In areas within which no underground facilities are
 189 located.

190 b. Where permanent markings, permit and mapping systems,
 191 and structural protection for underwater crossings are required
 192 or in place.

193 c. For previously marked utilities on construction of one
 194 or two family dwellings where the contractor remains in custody
 195 and control of the building site for the duration of the
 196 building permit.

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

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

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

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

215 (4) The notification number provided to the excavator
216 under this section shall be provided to any law enforcement
217 officer, government code inspector, or code enforcement officer
218 upon request.

219 (5)~~(4)~~ All member operators within the defined area of a
220 proposed excavation or demolition shall be promptly notified
221 through the system, except that member operators with state-
222 owned underground facilities located within the right-of-way of
223 a state highway need not be notified of excavation or demolition
224 activities and are under no obligation to mark or locate the
225 ~~such~~ facilities.

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

237 (b) If a member operator determines that a proposed
238 excavation or demolition is in proximity to or in conflict with
239 an underground facility of the member operator, except a

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

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

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

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

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

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

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293 with reasonable care and detection equipment or other acceptable
294 means to locate underground facilities are used.

295 (b) A member operator may not exercise the exemption
296 provided by this subsection if the member operator has
297 underground facilities that have not been taken out of service
298 and that are locatable using available designating technologies
299 to locate underground facilities.

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

314 (b) During the period when extraordinary circumstances
315 exist, the system shall remain available during business hours
316 to provide information to governmental agencies, member
317 operators affected by the extraordinary circumstances, and
318 member operators who can provide relief to the affected parties,

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319 unless the system itself has been adversely affected by
320 extraordinary circumstances.

321 (9) (a) After receiving notification from the system, a
322 member operator shall provide a positive response to the system
323 within 2 full business days, or 10 such days for an underwater
324 excavation, indicating the status of operations to protect the
325 facility.

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

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

341 (c) An excavator shall verify the system's positive
342 responses before beginning excavation. If an excavator knows
343 that an existing underground facility of a member operator is in
344 the area, the excavator must contact the member operator if the
345 facility is not marked and a positive response has not been

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346 received by the system. ~~The system shall implement procedures~~
347 ~~for positive response by January 1, 2004.~~

348 ~~(10)~~(9) A member operator shall use the "Uniform Color
349 Code for Utilities" ~~recommended guidelines for uniform temporary~~
350 ~~marking of underground facilities as approved by the Utility~~
351 ~~Location and Coordinating Council~~ of the American Public Works
352 Association when marking the horizontal route of any underground
353 facility of the operator.

354 ~~(11)~~(10) ~~Before~~ Prior to or during excavation or
355 demolition, if the marking of the horizontal route of any
356 facility is removed or is no longer visible, the excavator shall
357 stop excavation or demolition activities in the vicinity of the
358 facility and shall notify the system to have the route remarked.

359 ~~(12)~~(11) If any contact with or damage to any pipe, cable,
360 or its protective covering, or any other underground facility
361 occurs, the excavator causing the contact or damage shall
362 immediately notify the member operator. Upon receiving notice,
363 the member operator shall send personnel to the location as soon
364 as possible to effect temporary or permanent repair of the
365 contact or damage. Until such time as the contact or damage has
366 been repaired, the excavator shall cease excavation or
367 demolition activities that may cause further damage to such
368 underground facility.

369 Section 6. Subsection (2) of section 556.106, Florida
370 Statutes, is amended, present subsection (6) is redesignated as
371 subsection (7) and amended, and a new subsection (6) is added to
372 that section, to read:

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373 556.106 Liability of the member operator, excavator, and
374 system.--

375 (2) (a) If a ~~In the event any~~ person violates s. 556.105(1)
376 or (6)~~(5)~~, and subsequently, whether by himself or herself or
377 through the person's employees, contractors, subcontractors, or
378 agents, performs an excavation or demolition that ~~which~~ damages
379 an underground facility of a member operator, it is ~~shall be~~
380 rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~
381 person, if found liable, is ~~shall be~~ liable for the total sum of
382 the losses to all member operators involved as those costs are
383 normally computed. Any damage for loss of revenue and loss of
384 use may ~~shall~~ not exceed \$500,000 per affected underground
385 facility, except that revenues lost by a governmental member
386 operator whose, ~~which~~ revenues are used to support payments on
387 principal and interest on bonds may, ~~shall~~ not be limited. Any
388 liability of the state and its agencies and its subdivisions
389 which arises out of this chapter is ~~shall be~~ subject to the
390 provisions of s. 768.28.

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

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

403 (d) Obtaining information as to the location of an
 404 underground facility from the member operator as required by
 405 this chapter ~~act~~ does not excuse any excavator from performing
 406 an excavation or demolition in a careful and prudent manner,
 407 based on accepted engineering and construction practices, and it
 408 ~~nor~~ does not ~~it~~ excuse the ~~such~~ excavator from liability for any
 409 damage or injury resulting from any excavation or demolition.

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

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

421 (7)~~(6)~~ An excavator who performs any excavation with hand
 422 tools under ~~pursuant to~~ s. 556.108 (4) (c) or (5) is liable for
 423 any damage to any operator's underground facilities damaged
 424 during such excavation.

425 Section 7. Section 556.107, Florida Statutes, is amended
 426 to read:

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427 556.107 Violations.--

428 (1) NONCRIMINAL INFRACTIONS.--

429 (a) Violations of the following provisions are noncriminal

430 infractions:

431 1. Section 556.105(1), relating to providing required

432 information.

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

434 avoidance of excavation.

435 3. Section 556.105(11) ~~556.105(10)~~, relating to the need

436 to stop excavation or demolition.

437 4. Section 556.105(12) ~~556.105(11)~~, relating to the need

438 to cease excavation or demolition activities.

439 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to

440 identification of underground facilities, if a member operator

441 does not mark an underground facility, but not if a member

442 operator marks an underground facility incorrectly.

443 (b) Any excavator or member operator who commits a

444 noncriminal infraction under paragraph (a) may be issued a

445 citation by any local or state law enforcement officer,
 446 government code inspector, or code enforcement officer

447 ~~permitting agency inspector~~, and the issuer of a citation may

448 require an ~~any~~ excavator to cease work on any excavation or not

449 start a proposed excavation until there has been compliance with

450 the provisions of this chapter act. Citations shall ~~may~~ be hand-

451 delivered ~~issued~~ to any employee of the excavator or member

452 operator who is ~~directly~~ involved in the noncriminal infraction.

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

455 (c) Any excavator or member operator who commits a
456 noncriminal infraction under paragraph (a) may be required to
457 appear before the county court. The civil penalty for any such
458 infraction is \$250 plus court costs, except as otherwise
459 provided in this section. If a citation is issued by a local law
460 enforcement officer, a local government code inspector, or a
461 code enforcement officer, 80 percent of the civil penalty
462 collected by the clerk of the court shall be distributed to the
463 local governmental entity whose employee issued the citation and
464 20 percent of the penalty shall be retained by the clerk to
465 cover administrative costs, in addition to other court costs. If
466 a citation is issued by a state law enforcement officer, the
467 civil penalty collected by the clerk shall be retained by the
468 clerk for deposit into the fine and forfeiture fund established
469 pursuant to s. 142.01. Any person who fails to appear or
470 otherwise properly respond to a citation issued pursuant to
471 paragraph (d) shall, in addition to the citation, be charged
472 with the offense of failing to respond to such citation and,
473 upon conviction, ~~commits be guilty of~~ a misdemeanor of the
474 second degree, punishable as provided in s. 775.082 or s.
475 775.083. A written warning to this effect shall be provided at
476 the time any citation is issued pursuant to paragraph (b).

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

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

481 2. Sign and accept a citation indicating a promise to
 482 appear before the county court.

483
 484 The person issuing the citation ~~officer~~ may indicate on the
 485 citation the time and location of the scheduled hearing and
 486 shall indicate the applicable civil penalty.

487 (e) Any person charged with a noncriminal infraction under
 488 paragraph (a), unless required to appear before the county
 489 court, may:

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

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

495
 496 If the person cited follows either of the above procedures, she
 497 or he is ~~shall be~~ deemed to have admitted to committing the
 498 infraction and to have waived the right to a hearing on the
 499 issue of commission of the infraction. The ~~Such~~ admission may be
 500 used as evidence in any other proceeding under this chapter ~~act~~.

501 (f) Any person electing to appear before the county court
 502 or who is required to appear shall be deemed to have waived the
 503 limitations on the civil penalty specified in paragraph (c). The
 504 court, after a hearing, shall make a determination as to whether
 505 an infraction has been committed. If the commission of an

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506 | infraction has been proven, the court may impose a civil penalty
507 | not to exceed \$5,000 plus court costs. In determining the amount
508 | of the civil penalty, the court may consider previous
509 | noncriminal infractions committed.

510 | (g) At a hearing under this chapter, the commission of a
511 | charged infraction must be proven by a preponderance of the
512 | evidence.

513 | (h) If a person is found by the hearing official to have
514 | committed an infraction, the ~~such~~ person may appeal that finding
515 | to the circuit court.

516 | (i) Sunshine State One-Call of Florida, Inc., may, at its
517 | own cost, retain an attorney to assist in the presentation of
518 | relevant facts and law in the county court proceeding pertaining
519 | to the citation issued under this section. The corporation may
520 | also appear in any case appealed to the circuit court if a
521 | county court finds that an infraction of the chapter was
522 | committed. An appellant in the circuit court proceeding shall
523 | timely notify the corporation of any appeal under this section.

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

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533 Section 8. Subsections (1), (4), and (5) of section
 534 556.108, Florida Statutes, are amended to read:

535 556.108 Exemptions.--The notification requirements
 536 provided in s. 556.105(1) do not apply to:

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

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

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

556 (b) Maintenance activities performed by a state agency and
 557 its employees when such activities are within the right-of-way
 558 of a public road; however, ~~provided,~~ if a member operator has
 559 permanently marked facilities on such right-of-way, ~~ne~~

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560 mechanized equipment may not be used without first providing
 561 notification; or

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

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

569 1.(a) Locating, repairing, connecting, or protecting, or
 570 routine maintenance of, the member operator's underground
 571 facilities; or

572 2.(b) The extension of a member operator's underground
 573 facilities onto the property of a person to be served by such
 574 facilities.

575 (b)(e) The exemption provided in this subsection
 576 ~~paragraphs (a) and (b)~~ is limited to excavations to a depth of
 577 30 inches if the right-of-way has permanently marked facilities
 578 of a company other than the member operator or its agents
 579 performing the excavation.

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

582 556.111 Applicability to existing law.--Nothing in this
 583 act shall be construed to:

584 (3) Preempt a governmental member operator from reasonable
 585 regulation of its right-of-way. This subsection does not exempt
 586 a municipality, county, district, or other local governmental

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587 member operator from the provisions of this chapter that apply
 588 to the member operator.

589 Section 10. Paragraph (c) of subsection (3) of section
 590 337.401, Florida Statutes, is amended to read:

591 337.401 Use of right-of-way for utilities subject to
 592 regulation; permit; fees.--

593 (3)

594 (c)1. It is the intention of the state to treat all
 595 providers of communications services that use or occupy
 596 municipal or charter county roads or rights-of-way for the
 597 provision of communications services in a nondiscriminatory and
 598 competitively neutral manner with respect to the payment of
 599 permit fees. Certain providers of communications services have
 600 been granted by general law the authority to offset permit fees
 601 against franchise or other fees while other providers of
 602 communications services have not been granted this authority. In
 603 order to treat all providers of communications services in a
 604 nondiscriminatory and competitively neutral manner with respect
 605 to the payment of permit fees, each municipality and charter
 606 county shall make an election under either sub-subparagraph a.
 607 or sub-subparagraph b. and must inform the Department of Revenue
 608 of the election by certified mail by July 16, 2001. Such
 609 election shall take effect October 1, 2001.

610 a.(I) The municipality or charter county may require and
 611 collect permit fees from any providers of communications
 612 services that use or occupy municipal or county roads or rights-
 613 of-way. All fees permitted under this sub-subparagraph must be

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614 reasonable and commensurate with the direct and actual cost of
615 the regulatory activity, including issuing and processing
616 permits, plan reviews, physical inspection, and direct
617 administrative costs; must be demonstrable; and must be
618 equitable among users of the roads or rights-of-way. A fee
619 permitted under this sub-subparagraph may not: be offset against
620 the tax imposed under chapter 202; include the costs of roads or
621 rights-of-way acquisition or roads or rights-of-way rental;
622 include any general administrative, management, or maintenance
623 costs of the roads or rights-of-way; or be based on a percentage
624 of the value or costs associated with the work to be performed
625 on the roads or rights-of-way. In an action to recover amounts
626 due for a fee not permitted under this sub-subparagraph, the
627 prevailing party may recover court costs and attorney's fees at
628 trial and on appeal. In addition to the limitations set forth in
629 this section, a fee levied by a municipality or charter county
630 under this sub-subparagraph may not exceed \$100. However, permit
631 fees may not be imposed with respect to permits that may be
632 required for service drop lines not required to be noticed under
633 s. 556.108(5) (a)2.~~(b)~~ or for any activity that does not require
634 the physical disturbance of the roads or rights-of-way or does
635 not impair access to or full use of the roads or rights-of-way.

636 (II) To ensure competitive neutrality among providers of
637 communications services, for any municipality or charter county
638 that elects to exercise its authority to require and collect
639 permit fees under this sub-subparagraph, the rate of the local
640 communications services tax imposed by such jurisdiction, as

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641 | computed under s. 202.20, shall automatically be reduced by a
642 | rate of 0.12 percent.

643 | b. Alternatively, the municipality or charter county may
644 | elect not to require and collect permit fees from any provider
645 | of communications services that uses or occupies municipal or
646 | charter county roads or rights-of-way for the provision of
647 | communications services; however, each municipality or charter
648 | county that elects to operate under this sub-subparagraph
649 | retains all authority to establish rules and regulations for
650 | providers of communications services to use or occupy roads or
651 | rights-of-way as provided in this section. If a municipality or
652 | charter county elects to operate under this sub-subparagraph,
653 | the total rate for the local communications services tax as
654 | computed under s. 202.20 for that municipality or charter county
655 | may be increased by ordinance or resolution by an amount not to
656 | exceed a rate of 0.12 percent. If a municipality or charter
657 | county elects to increase its rate effective October 1, 2001,
658 | the municipality or charter county shall inform the department
659 | of such increased rate by certified mail postmarked on or before
660 | July 16, 2001.

661 | c. A municipality or charter county that does not make an
662 | election as provided for in this subparagraph shall be presumed
663 | to have elected to operate under the provisions of sub-
664 | subparagraph b.

665 | 2. Each noncharter county shall make an election under
666 | either sub-subparagraph a. or sub-subparagraph b. and shall
667 | inform the Department of Revenue of the election by certified

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668 mail by July 16, 2001. Such election shall take effect October
669 1, 2001.

670 a. The noncharter county may elect to require and collect
671 permit fees from any providers of communications services that
672 use or occupy noncharter county roads or rights-of-way. All fees
673 permitted under this sub-subparagraph must be reasonable and
674 commensurate with the direct and actual cost of the regulatory
675 activity, including issuing and processing permits, plan
676 reviews, physical inspection, and direct administrative costs;
677 must be demonstrable; and must be equitable among users of the
678 roads or rights-of-way. A fee permitted under this sub-
679 subparagraph may not: be offset against the tax imposed under
680 chapter 202; include the costs of roads or rights-of-way
681 acquisition or roads or rights-of-way rental; include any
682 general administrative, management, or maintenance costs of the
683 roads or rights-of-way; or be based on a percentage of the value
684 or costs associated with the work to be performed on the roads
685 or rights-of-way. In an action to recover amounts due for a fee
686 not permitted under this sub-subparagraph, the prevailing party
687 may recover court costs and attorney's fees at trial and on
688 appeal. In addition to the limitations set forth in this
689 section, a fee levied by a noncharter county under this sub-
690 subparagraph may not exceed \$100. However, permit fees may not
691 be imposed with respect to permits that may be required for
692 service drop lines not required to be noticed under s.
693 556.108(5) (a)2. ~~(b)~~ or for any activity that does not require the

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694 physical disturbance of the roads or rights-of-way or does not
695 impair access to or full use of the roads or rights-of-way.

696 b. Alternatively, the noncharter county may elect not to
697 require and collect permit fees from any provider of
698 communications services that uses or occupies noncharter county
699 roads or rights-of-way for the provision of communications
700 services; however, each noncharter county that elects to operate
701 under this sub-subparagraph shall retain all authority to
702 establish rules and regulations for providers of communications
703 services to use or occupy roads or rights-of-way as provided in
704 this section. If a noncharter county elects to operate under
705 this sub-subparagraph, the total rate for the local
706 communications services tax as computed under s. 202.20 for that
707 noncharter county may be increased by ordinance or resolution by
708 an amount not to exceed a rate of 0.24 percent, to replace the
709 revenue the noncharter county would otherwise have received from
710 permit fees for providers of communications services. If a
711 noncharter county elects to increase its rate effective October
712 1, 2001, the noncharter county shall inform the department of
713 such increased rate by certified mail postmarked on or before
714 July 16, 2001.

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

718 3. Except as provided in this paragraph, municipalities
719 and counties retain all existing authority to require and
720 collect permit fees from users or occupants of municipal or

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721 | county roads or rights-of-way and to set appropriate permit fee
722 | amounts.

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