

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes-The bill prohibits an operator of underground facilities from charging an excavator any costs or expenses associated with the operator's compliance with the Underground Facility Damage Prevention and Safety Act. The bill also prohibits an excavator from charging an operator of underground facilities any costs or expenses associated with the excavator's compliance with the Act.

Promote Personal Responsibility/Maintain Public Security-The bill removes a possible disincentive for excavators to have the location of underground facilities marked prior to excavation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.² All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.³

The not-for-profit corporation is Sunshine State One-Call of Florida, Inc. (SSOCOF), which operates the notice system through its board of directors.⁴ The system is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁵ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.⁶ The person

¹ Section 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

² S. 556.101(2), F.S.

³ S. 556.103(1), F.S.

⁴ S. 556.103, F.S.

⁵ S. 556.104, F.S.

⁶ Section 556.105, F.S., provides an exception for excavation beneath the waters of the state where the member operator has 10 days to mark the facilities.

must also provide specified identification, location, and operational information.⁷ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁸

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.⁹ Within two full business days after the time the notification is received by the system, potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and should not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹⁰

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not demolish until all member operators' underground facilities have been marked and located or removed.¹¹

The Act establishes civil liability for violations of certain provisions. The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector or code enforcement officer.¹² The Act provides that it is a misdemeanor in the second degree for any person to knowingly and willfully remove or otherwise destroy valid stakes or other valid physical markings.¹³

SSOCOF is funded through monthly assessments made to each member operator for a proportional share of system operating costs. If a member operator receives fewer than 10 notifications in a month, it is not assessed for that month.¹⁴

The one-call notification system has been marketed as a free service.¹⁵ According to SSOCOF, one municipality passed ordinances in September 2007 providing for specific charges to excavators for marking underground water, sewer, and gas lines. In apparent response to these ordinances, a telecommunications carrier in the same area filed a tariff with the Public Service Commission in January 2008 to charge a reciprocal marking fee to SSOCOF members that impose a marking fee on it.

⁷ S. 556.105(1), F.S.

⁸ S. 556.105(3), F.S.

⁹ S. 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

¹⁰ S. 556.105(5), F.S.

¹¹ S. 556.105(6), F.S.

¹² S. 556.107(1), F.S.

¹³ S. 556.107(2), F.S.

¹⁴ S. 556.110, F.S.

¹⁵ Sunshine State One-Call of Florida's website contains various marketing materials and links to radio and television spots.

According to the Common Ground Alliance,¹⁶ forty states do not specify options for charging to mark underground facilities, four states (Iowa, Wyoming, Colorado, and Minnesota) expressly prohibit such charges, and one state (Maryland) gives municipalities the right to impose such charges. The Common Ground Alliance is currently considering a proposed “best practice” that would require, once a call-center is notified, that locations of underground facilities be provided by operators at no cost to the excavator.¹⁷

Effect of the Bill

The bill creates s. 556.105(13), F.S., to provide that any costs or expenses associated with compliance by an excavator with s. 556.105, F.S., shall not be charged to any member operator, and that any costs or expenses associated with compliance by a member operator with s. 556.105, F.S., shall not be charged to any excavator. The bill provides that no person shall charge the prohibited costs or expenses after the effective date of this act. The bill also provides that this new subsection shall not excuse a member operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1 Creates s. 556.105(13), F.S., amending procedures related to the Sunshine State One-Call of Florida.
- Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
Local governments will not realize a source of revenue for locating or marking underground lines.

¹⁶The Common Ground Alliance is a member-driven association that promotes effective damage prevention practices and has established itself as the leading organization in an effort to reduce damages to all underground facilities in North America through a shared responsibility among all stakeholders. (www.commongroundalliance.com).

¹⁷ Common Ground Alliance, summary of November 14, 2007, Best Practices Committee Meeting, page 7 and proposal form for specific proposal.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities will not realize a source of revenue for locating or marking underground lines.

D. FISCAL COMMENTS:

As noted above, SSOCOF reports that one municipality (a city) passed three separate rate increase ordinances (gas, water, and sewer) in September 2007 which authorize the city to charge excavators for locating or marking underground lines. SSOCOF indicates that this particular city received an average of 75 "tickets" per month during 2007. A "ticket" is the notice of intent to excavate. SSOCOF estimates that about one-third of the tickets received by a utility might result in a need to locate or mark underground lines. Because this particular city operates three utilities, there is a potential opportunity to charge excavators about \$3,750 per month for locating or marking lines (25 tickets x 3 utility services x \$50.00 minimum per marking).

As also noted above, the local exchange telephone company that serves that city filed a tariff with the PSC in January 2008 "to impose fees to SSOCOF members who charge for locating underground facilities." SSOCOF states that because utility companies act as both excavators and member operators within this program, the filing of tariffs such as this one could lead to both parties charging each other for underground line location or marking in order to offset the charges. In addition, it is not known how much this city (or any other municipality in the state of Florida for that matter) has charged other individuals, entities, or utilities for locating or marking underground lines.

Current law provides for a not-for-profit corporation (SSOCOF) to administer a free-access notification system (commonly referred to as "Call Before You Dig"). This bill provides that the location or marking of underground lines is also part of this free system. It appears that the intent of this bill is to maximize use of the system, the purpose of which is to prevent injury to persons or property and interruption of services resulting to damage to underground facilities.¹⁸ In doing so, this bill also provides that no one will gain a positive fiscal impact in complying with the requirements of s. 556.105, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

While the bill would prohibit municipalities and counties from charging fees associated with marking underground facilities, this prohibition would apply to all entities with underground facilities.

Therefore, this bill may be an exception to the mandates provision since it applies to all similarly situated persons.

¹⁸ S. 556.101(3).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None