

1                                   A bill to be entitled  
2           An act relating to underground facility damage prevention  
3           and safety; amending s. 556.101, F.S.; prohibiting  
4           municipalities, counties, districts, and other local  
5           governments from enacting ordinances or rules that  
6           conflict with specified provisions; amending s. 556.103,  
7           F.S.; requiring that the board of directors of Sunshine  
8           State One-Call of Florida, Inc., present to the Governor  
9           and Legislature an annual report that includes a summary  
10          of reports issued by the clerks of court; amending s.  
11          556.105, F.S.; requiring that an excavator provide the  
12          Sunshine State One-Call of Florida, Inc., system with  
13          certain specified information not less than 10 full  
14          business days before beginning an excavation or demolition  
15          beneath the waters of the state; prohibiting the use of  
16          such information by member operators for sales or  
17          marketing purposes; deleting obsolete provisions; removing  
18          provisions requiring the premarking of certain proposed  
19          excavation sites; requiring a mutually agreed excavation  
20          plan for high-priority excavations; amending s. 556.106,  
21          F.S.; removing redundant provisions that provide a limited  
22          waiver of sovereign immunity for the state, its agencies,  
23          and its political subdivisions arising from matters  
24          involving underground facilities; amending s. 556.107,  
25          F.S.; providing increased penalties for noncriminal  
26          infractions of the Sunshine State One-Call of Florida,  
27          Inc., system; requiring each clerk of court to submit a  
28          report to Sunshine State One-Call of Florida, Inc., by a

29 | specified date listing each violation that has been filed  
30 | in the county during the preceding calendar year; amending  
31 | s. 556.109, F.S.; specifying circumstances under which an  
32 | excavator shall not notify the Sunshine State One-Call of  
33 | Florida, Inc., system that there is an emergency; amending  
34 | s. 556.110, F.S.; deleting a provision that limits  
35 | assessments against a member operator who receives fewer  
36 | than 10 notifications in any month; creating s. 556.114,  
37 | F.S.; providing requirements for low-impact marking  
38 | practices; providing procedures and methods to mark areas  
39 | of excavation; requiring Sunshine State One-Call of  
40 | Florida, Inc., to establish an educational program for the  
41 | purpose of informing excavators and member operators about  
42 | low-impact marking practices; creating s. 556.115, F.S.;  
43 | requiring Sunshine State One-Call of Florida, Inc., to  
44 | create a voluntary alternative dispute resolution program  
45 | that is open to all member operators, excavators, and  
46 | other stakeholders; requiring the voluntary users of the  
47 | alternative dispute resolution program to choose the form  
48 | of alternative dispute resolution to be used; requiring  
49 | that the costs of using the voluntary program be borne by  
50 | the users; providing that unless binding arbitration is  
51 | the chosen method of alternative dispute resolution, the  
52 | users or any one of such users may end the process at any  
53 | time and proceed in a court of competent jurisdiction or  
54 | before the Division of Administrative Hearings; creating  
55 | s. 556.116, F.S.; defining the terms "division," "high-  
56 | priority subsurface installation," and "incident";

57 providing that if an excavation is proposed within 15 feet  
58 of a high-priority subsurface installation and is  
59 identified as such by the facility operator, the facility  
60 operator must notify the excavator of the existence of the  
61 high-priority subsurface installation and mark its  
62 location before excavation may begin; requiring an  
63 excavator to notify the operator of the excavation start  
64 time in the vicinity of a high-priority subsurface  
65 installation; providing that an alleged infraction that  
66 results in an incident must be reported to the system by  
67 an operator or an excavator; providing that the system  
68 shall transmit incident reports to the Division of  
69 Administrative Hearings; providing that the system and the  
70 division may contract for the division to conduct  
71 proceedings; providing that the division has jurisdiction  
72 to determine the facts and law concerning an alleged  
73 incident; authorizing the division to impose a fine for a  
74 violation if the violation was a proximate cause of the  
75 incident; providing procedures, venue, and standard of  
76 proof; providing an effective date.

77  
78 Be It Enacted by the Legislature of the State of Florida:

79  
80 Section 1. Paragraph (d) of subsection (3) of section  
81 556.101, Florida Statutes, is amended to read:

82 556.101 Short title; legislative intent.—

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

84 (d) Reserve to the state the power to regulate any subject

85 matter specifically addressed in this chapter. Municipalities,  
 86 counties, districts, or other local governments may not adopt or  
 87 enforce ordinances or rules that conflict with this chapter or  
 88 that prescribe any of the following:

89 1. Require operators of underground facilities to obtain  
 90 permits from local governments in order to identify underground  
 91 facilities.

92 2. Require premarking or marking.

93 3. Specify the types of paint or other marking devices  
 94 that are used to identify underground facilities.

95 4. Require removal of marks.

96 Section 2. Subsections (4) and (5) of section 556.103,  
 97 Florida Statutes, are amended to read:

98 556.103 Creation of the corporation; establishment of the  
 99 board of directors; authority of the board; annual report.—

100 (4) ~~Beginning in 1994,~~ The board of directors shall file  
 101 with the Governor, not later than 60 days before the convening  
 102 of each regular session of the Legislature, an annual progress  
 103 report on the operation of the system, which must include a  
 104 summary of the reports to the system from the clerks of court.

105 (5) ~~Beginning in 1998,~~ The board of directors shall submit  
 106 to the President of the Senate, the Speaker of the House of  
 107 Representatives, and the Governor, not later than 60 days before  
 108 the convening of each regular session of the Legislature, an  
 109 annual progress report on the participation by municipalities  
 110 and counties in the one-call notification system created by this  
 111 chapter. The report must include a summary of the reports to the  
 112 system from the clerks of court.

113 Section 3. Paragraphs (a) and (d) of subsection (1),  
114 subsections (5) and (6), paragraph (a) of subsection (7),  
115 paragraph (a) of subsection (9), and subsection (11) of section  
116 556.105, Florida Statutes, are amended to read:

117 556.105 Procedures.—

118 (1) (a) Not less than 2 full business days before beginning  
119 any excavation or demolition that is not, ~~except an excavation~~  
120 beneath the waters of the state, and not less than 10 full  
121 business days before beginning any excavation or demolition that  
122 is beneath the waters of the state, an excavator shall provide  
123 the following information through the system:

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

127 2. The name and telephone number of the representative for  
128 the excavator, and a valid electronic address to facilitate a  
129 positive response by the system should be provided, if  
130 available.

131 3. The county, the city or closest city, and the street  
132 address or the closest street, road, or intersection to the  
133 location where the excavation or demolition is to be performed,  
134 and the construction limits of the excavation or demolition.

135 4. The commencement date and anticipated duration of the  
136 excavation or demolition.

137 5. Whether machinery will be used for the excavation or  
138 demolition.

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

140 7. The type of work to be done.

141           8. The approximate depth of the excavation.

142           (d) Member operators shall use the information provided to

143 the system by other member operators only for the purposes

144 stated in this chapter and not for sales or marketing purposes.

145           ~~1. The system shall study the feasibility of the~~

146 ~~establishment or recognition of zones for the purpose of~~

147 ~~allowing excavation within such zones to be undertaken without~~

148 ~~notice to the system as now required by this chapter when such~~

149 ~~zones are:~~

150           ~~a. In areas within which no underground facilities are~~

151 ~~located.~~

152           ~~b. Where permanent markings, permit and mapping systems,~~

153 ~~and structural protection for underwater crossings are required~~

154 ~~or in place.~~

155           ~~e. For previously marked utilities on construction of one-~~

156 ~~or two-family dwellings where the contractor remains in custody~~

157 ~~and control of the building site for the duration of the~~

158 ~~building permit.~~

159           ~~2. The system shall report the results of the study to the~~

160 ~~Legislature on or before February 1, 2007, along with~~

161 ~~recommendations for further legislative action.~~

162           (5) All member operators within the defined area of a

163 proposed excavation or demolition shall be promptly notified

164 through the system, except that member operators with state-

165 owned underground facilities located within the right-of-way of

166 a state highway need not be notified of excavation or demolition

167 activities and are under no obligation to mark or locate the

168 facilities.

169       ~~(a) When an excavation site cannot be described in~~  
170 ~~information provided under subparagraph (1)(a)3. with sufficient~~  
171 ~~particularity to enable the member operator to ascertain the~~  
172 ~~excavation site, and if the excavator and member operator have~~  
173 ~~not mutually agreed otherwise, the excavator shall premark the~~  
174 ~~proposed area of the excavation before a member operator is~~  
175 ~~required to identify the horizontal route of its underground~~  
176 ~~facilities in the proximity of any excavation. However,~~  
177 ~~premarking is not required for any excavation that is over 500~~  
178 ~~feet in length and is not required where the premarking could~~  
179 ~~reasonably interfere with traffic or pedestrian control.~~

180       (a)~~(b)~~ If a member operator determines that a proposed  
181 excavation or demolition is in proximity to or in conflict with  
182 an underground facility of the member operator, except a  
183 facility beneath the waters of the state, which is governed by  
184 paragraph (b) ~~(e)~~, the member operator shall identify the  
185 horizontal route by marking to within 24 inches from the outer  
186 edge of either side of the underground facility by the use of  
187 stakes, paint, flags, or other suitable means within 2 full  
188 business days after the time the notification is received under  
189 subsection (1). If the member operator is unable to respond  
190 within such time, the member operator shall communicate with the  
191 person making the request and negotiate a new schedule and time  
192 that is agreeable to, and should not unreasonably delay, the  
193 excavator.

194       (b)~~(e)~~ If a member operator determines that a proposed  
195 excavation is in proximity to or in conflict with an underground  
196 facility of the member operator beneath the waters of the state,

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197 the member operator shall identify the estimated horizontal  
198 route of the underground facility, within 10 business days,  
199 using marking buoys or other suitable devices, unless directed  
200 otherwise by an agency having jurisdiction over the waters of  
201 the state under which the member operator's underground facility  
202 is located.

203 (c)~~(d)~~ When excavation is to take place within a tolerance  
204 zone, an excavator shall use increased caution to protect  
205 underground facilities. The protection requires hand digging,  
206 pot holing, soft digging, vacuum excavation methods, or other  
207 similar procedures to identify underground facilities. Any use  
208 of mechanized equipment within the tolerance zone must be  
209 supervised by the excavator.

210 (6) (a) An excavator shall avoid excavation in the area  
211 described in the notice given under subsection (1) until each  
212 member operator underground facility has been marked and located  
213 or until the excavator has been notified that no member operator  
214 has underground facilities in the area described in the notice,  
215 or for the time allowed for markings set forth in paragraphs  
216 (5) (a) and (b) ~~(5) (b) and (c)~~, whichever occurs first. If a  
217 member operator has not located and marked its underground  
218 facilities within the time allowed for marking set forth in  
219 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, the excavator may  
220 proceed with the excavation, if the excavator does so with  
221 reasonable care and if detection equipment or other acceptable  
222 means to locate underground facilities are used.

223 (b) An excavator may not demolish in the area described in  
224 the notice given under subsection (1) until all member operator



225 | underground facilities have been marked and located or removed.

226 |       (7) (a) A member operator that states that it does not have  
 227 | accurate information concerning the exact location of its  
 228 | underground facilities is exempt from the requirements of  
 229 | paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the  
 230 | best available information to the excavator in order to comply  
 231 | with the requirements of this section. An excavator is not  
 232 | liable for any damage to an underground facility under the  
 233 | exemption in this subsection if the excavation or demolition is  
 234 | performed with reasonable care and detection equipment or other  
 235 | acceptable means to locate underground facilities are used.

236 |       (9) (a) After receiving notification from the system, a  
 237 | member operator shall provide a positive response to the system  
 238 | within 2 full business days, or 10 such days for an underwater  
 239 | excavation or demolition, indicating the status of operations to  
 240 | protect the facility.

241 |       (11) Before or during excavation or demolition, if the  
 242 | marking of the horizontal route of any facility is removed or is  
 243 | no longer visible, or, in the case of an underwater facility, is  
 244 | inadequately documented, the excavator shall stop excavation or  
 245 | demolition activities in the vicinity of the facility and shall  
 246 | notify the system to have the route remarked or adequately  
 247 | documented by a member operator or in a manner approved by the  
 248 | member operator.

249 |       Section 4. Section 556.106, Florida Statutes, is amended  
 250 | to read:

251 |       556.106 Liability of the member operator, excavator, and  
 252 | system.—

253 (1) There is no liability on the part of, and no cause of  
 254 action of any nature shall arise against, the board members of  
 255 the corporation in their capacity as administrators of the  
 256 system.

257 (2) (a) If a person violates s. 556.105(1) or (6), and  
 258 subsequently, whether by himself or herself or through the  
 259 person's employees, contractors, subcontractors, or agents,  
 260 performs an excavation or demolition that damages an underground  
 261 facility of a member operator, it is rebuttably presumed that  
 262 the person was negligent. The person, if found liable, is liable  
 263 for the total sum of the losses to all member operators involved  
 264 as those costs are normally computed. Any damage for loss of  
 265 revenue and loss of use may not exceed \$500,000 per affected  
 266 underground facility, except that revenues lost by a  
 267 governmental member operator whose revenues are used to support  
 268 payments on principal and interest on bonds may not be limited.  
 269 ~~Any liability of the state and its agencies and its subdivisions~~  
 270 ~~which arises out of this chapter is subject to the provisions of~~  
 271 ~~s. 768.28.~~

272 (b) If any excavator fails to discharge a duty imposed by  
 273 ~~the provisions of~~ this chapter, the excavator, if found liable,  
 274 is liable for the total sum of the losses to all parties  
 275 involved as those costs are normally computed. Any damage for  
 276 loss of revenue and loss of use may not exceed \$500,000 per  
 277 affected underground facility, except that revenues lost by a  
 278 governmental member operator whose revenues are used to support  
 279 payments on principal and interest on bonds may not be limited.

280 ~~(c) Any liability of the state, its agencies, or its~~

281 ~~subdivisions which arises out of this chapter is subject to the~~  
 282 ~~provisions of s. 768.28.~~

283 (c)~~(d)~~ Obtaining information as to the location of an  
 284 underground facility from the member operator as required by  
 285 this chapter does not excuse any excavator from performing an  
 286 excavation or demolition in a careful and prudent manner, based  
 287 on accepted engineering and construction practices, and it does  
 288 not excuse the excavator from liability for any damage or injury  
 289 resulting from any excavation or demolition.

290 (3) If, after receiving proper notice, a member operator  
 291 fails to discharge a duty imposed by ~~the provisions of~~ this act  
 292 and an underground facility of a ~~such~~ member operator is damaged  
 293 by an excavator who has complied with ~~the provisions of~~ this  
 294 act, as a proximate result of the member operator's failure to  
 295 discharge such duty, the ~~such~~ excavator is ~~shall~~ not be liable  
 296 for such damage and the member operator, if found liable, is  
 297 ~~shall be~~ liable to such person for the total cost of any loss or  
 298 injury to any person or damage to equipment resulting from the  
 299 member operator's failure to comply with this act. Any damage  
 300 for loss of revenue and loss of use shall not exceed \$500,000  
 301 per affected underground facility, except that revenues lost by  
 302 a governmental member operator, which revenues are used to  
 303 support payments on principal and interest on bonds, shall not  
 304 be limited. ~~The liability of governmental member operators shall~~  
 305 ~~be subject to limitations provided in chapter 768.~~

306 (4) If an owner of an underground facility fails to become  
 307 a member of the corporation in order to use and participate in  
 308 the system, as required by this act, and that failure is a cause

309 of damage to that underground facility caused by an excavator  
 310 who has complied with ~~the provisions of~~ this act and has  
 311 exercised reasonable care in the performance of the excavation  
 312 that has caused damage to the underground facility, the owner  
 313 has no right of recovery against the excavator for the damage to  
 314 that underground facility.

315 (5) If, after receiving proper notification, the system  
 316 fails to discharge its duties, resulting in damage to an  
 317 underground facility, the system, if found liable, shall be  
 318 liable to all parties, as defined in this act. Any damage for  
 319 loss of revenue and loss of use shall not exceed \$500,000 per  
 320 affected underground facility, except that revenues lost by a  
 321 governmental member operator, which revenues are used to support  
 322 payments on principal and interest on bonds, shall not be  
 323 limited.

324 (6) The system does not have a duty to mark or locate  
 325 underground facilities and may not do so, and a right of  
 326 recovery does not exist against the system for failing to mark  
 327 or locate underground facilities. The system is not liable for  
 328 the failure of a member operator to comply with the requirements  
 329 of this chapter.

330 (7) An excavator or a member operator who performs any  
 331 excavation with hand tools under s. 556.108(4)(c) or (5) is  
 332 liable for any damage to any operator's underground facilities  
 333 damaged during such excavation.

334 (8) Any liability of the state, its agencies, or its  
 335 subdivisions which arises out of this chapter is subject to the  
 336 provisions of s. 768.28.

337 Section 5. Section 556.107, Florida Statutes, is amended  
 338 to read:

339 556.107 Violations.—

340 (1) NONCRIMINAL INFRACTIONS.—

341 (a) Violations of the following provisions are noncriminal  
 342 infractions:

343 1. Section 556.105(1), relating to providing required  
 344 information.

345 2. Section 556.105(6), relating to the avoidance of  
 346 excavation.

347 3. Section 556.105(11), relating to the need to stop  
 348 excavation or demolition because marks are no longer visible,  
 349 or, in the case of underwater facilities, are inadequately  
 350 documented.

351 4. Section 556.105(12), relating to the need to cease  
 352 excavation or demolition activities because of contact or damage  
 353 to an underground facility.

354 5. Section 556.105(5)(a) and (b), ~~556.105(5)(b) and (c)~~  
 355 relating to identification of underground facilities, if a  
 356 member operator does not mark an underground facility, but not  
 357 if a member operator marks an underground facility incorrectly.

358 6. Section 556.109(2), relating to falsely notifying the  
 359 system of an emergency situation or condition.

360 7. Section 556.114(1), (2), (3), and (4), relating to a  
 361 failure to follow low-impact marking practices, as defined  
 362 therein.

363 (b) Any excavator or member operator who commits a  
 364 noncriminal infraction under paragraph (a) may be issued a

365 citation by any local or state law enforcement officer,  
 366 government code inspector, or code enforcement officer, and the  
 367 issuer of a citation may require an excavator to cease work on  
 368 any excavation or not start a proposed excavation until there  
 369 has been compliance with the provisions of this chapter.  
 370 Citations shall be hand delivered to any employee of the  
 371 excavator or member operator who is involved in the noncriminal  
 372 infraction. The citation shall be issued in the name of the  
 373 excavator or member operator, whichever is applicable.

374 (c) Any excavator or member operator who commits a  
 375 noncriminal infraction under paragraph (a) may be required to  
 376 pay a ~~appear before the county court. The~~ civil penalty for each  
 377 ~~any such~~ infraction, which is \$500 ~~\$250~~ plus court costs, ~~except~~  
 378 ~~as otherwise provided in this section.~~ If a citation is issued  
 379 by a local law enforcement officer, a local government code  
 380 inspector, or a code enforcement officer, 80 percent of the  
 381 civil penalty collected by the clerk of the court shall be  
 382 distributed to the local governmental entity whose employee  
 383 issued the citation and 20 percent of the penalty shall be  
 384 retained by the clerk to cover administrative costs, in addition  
 385 to other court costs. If a citation is issued by a state law  
 386 enforcement officer, the civil penalty collected by the clerk  
 387 shall be retained by the clerk for deposit into the fine and  
 388 forfeiture fund established pursuant to s. 142.01. Any person  
 389 who fails to ~~appear or otherwise~~ properly respond to a citation  
 390 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the  
 391 citation, be charged with the offense of failing to respond to  
 392 the ~~such~~ citation and, upon conviction, commits a misdemeanor of

393 | the second degree, punishable as provided in s. 775.082 or s.  
 394 | 775.083. A written warning to this effect must ~~shall~~ be provided  
 395 | at the time any citation is issued pursuant to paragraph (b).

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

398 | 1. ~~post a bond, which shall be equal in amount to the~~  
 399 | ~~applicable civil penalty plus court costs;~~ ~~or~~

400 | 2. ~~Sign and accept a citation indicating a promise to~~  
 401 | ~~appear before the county court.~~

402 |

403 | ~~The person issuing the citation may indicate on the citation the~~  
 404 | ~~time and location of the scheduled hearing and shall indicate~~  
 405 | ~~the applicable civil penalty.~~

406 | (e) A ~~Any~~ person charged with a noncriminal infraction  
 407 | under paragraph (a), ~~unless required to appear before the county~~  
 408 | ~~court,~~ may:

409 | 1. ~~pay the civil penalty plus court costs,~~ ~~in lieu of~~  
 410 | ~~appearance,~~ ~~either~~ by mail or in person, within 30 days after  
 411 | the date of receiving the citation; ~~or~~

412 | 2. ~~Forfeit bond, if a bond has been posted, by not~~  
 413 | ~~appearing at the designated time and location.~~

414 |

415 | If the person cited pays the civil penalty ~~follows either of the~~  
 416 | ~~above procedures,~~ she or he is deemed to have admitted to  
 417 | committing the infraction and to have waived the right to a  
 418 | hearing on the issue of commission of the infraction. The  
 419 | admission may be used as evidence in any other proceeding under  
 420 | this chapter.

421           (f) Any person may elect ~~electing~~ to appear before the  
 422 county court and if so electing ~~or who is required to appear~~  
 423 ~~shall be~~ deemed to have waived the limitations on the civil  
 424 penalty specified in paragraph (c). The court, after a hearing,  
 425 shall make a determination as to whether an infraction has been  
 426 committed. If the commission of an infraction has been proven,  
 427 the court may impose a civil penalty not to exceed \$5,000 plus  
 428 court costs. In determining the amount of the civil penalty, the  
 429 court may consider previous noncriminal infractions committed.

430           (g) At a court hearing under this chapter, the commission  
 431 of a charged infraction must be proven by a preponderance of the  
 432 evidence.

433           (h) If a person is found by a judge or ~~the~~ hearing  
 434 official to have committed an infraction, the person may appeal  
 435 that finding to the circuit court.

436           (i) Sunshine State One-Call of Florida, Inc., may, at its  
 437 own cost, retain an attorney to assist in the presentation of  
 438 relevant facts and law in the county court proceeding pertaining  
 439 to the citation issued under this section. The corporation may  
 440 also appear in any case appealed to the circuit court if a  
 441 county court judge finds that an infraction of the chapter was  
 442 committed. An appellant in the circuit court proceeding shall  
 443 timely notify the corporation of any appeal under this section.

444           (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
 445 clerk of court shall submit a report to Sunshine State One-Call  
 446 of Florida, Inc., listing each violation notice written under  
 447 paragraph (1) (a) which has been filed in that county during the  
 448 preceding calendar year. The report must state the name and



449 address of the member or excavator who committed each infraction  
 450 and indicate whether or not the civil penalty for the infraction  
 451 was paid.

452 (3)~~(2)~~ MISDEMEANORS.—Any person who knowingly and  
 453 willfully removes or otherwise destroys the valid stakes or  
 454 other valid physical markings described in s. 556.105(5) (a) and  
 455 (b) ~~s. 556.105(5) (b) and (c)~~ used to mark the horizontal route  
 456 of an underground facility commits a misdemeanor of the second  
 457 degree, punishable as provided in s. 775.082 or s. 775.083. For  
 458 purposes of this subsection, stakes or other nonpermanent  
 459 physical markings are considered valid for 30 calendar days  
 460 after information is provided to the system under s.  
 461 556.105(1) (a) ~~s. 556.105(1) (c)~~.

462 Section 6. Section 556.109, Florida Statutes, is amended  
 463 to read:

464 556.109 Emergency excavations or demolitions attempted;  
 465 exception.—

466 (1) ~~The provisions of~~ This act does ~~de~~ not apply to making  
 467 an excavation or demolition during an emergency if, ~~provided~~ the  
 468 system or the member operator was notified at the earliest  
 469 opportunity and all reasonable precautions had been taken to  
 470 protect any underground facility. For the purposes of this act,  
 471 "emergency" means any condition constituting a clear and present  
 472 danger to life or property; a situation caused by the escape of  
 473 any substance transported by means of an underground facility;  
 474 any interruption of vital public service or communication caused  
 475 by any break or defect in a member operator's underground  
 476 facility; or, in the case of the State Highway System or streets

477 or roads maintained by a political subdivision or underground  
 478 facilities owned, operated, or maintained by a political  
 479 subdivision, if the use of such highways, streets, roads, or  
 480 underground facilities is, in the sole judgment of the  
 481 Department of Highway Safety and Motor Vehicles, the Department  
 482 of Transportation, or such political subdivision, impaired by an  
 483 unforeseen occurrence that ~~which~~ necessitates repair beginning  
 484 immediately after such occurrence.

485 (2) An excavator shall not notify the system that there is  
 486 an emergency unless the excavator reasonably believes that the  
 487 intended excavation or demolition is due to a situation or  
 488 condition as defined in subsection (1).

489 Section 7. Section 556.110, Florida Statutes, is amended  
 490 to read:

491 556.110 Costs assessed among member operators.—Member  
 492 operators shall proportionately share in the cost of operating  
 493 the system through monthly assessments made upon each member  
 494 operator. ~~However, any member that receives fewer than 10~~  
 495 ~~notifications in any month shall not be assessed for such month.~~

496 Section 8. Section 556.114, Florida Statutes, is created  
 497 to read:

498 556.114 Low-impact marking practices.—

499 (1) An excavator providing notice under s. 556.105(1)(a)  
 500 shall identify in its notice only the area that will be  
 501 excavated during the period that the information in such notice  
 502 is considered valid under s. 556.105(1)(c).

503 (2) When an excavator has not completed an excavation  
 504 noticed under s. 556.105(1)(a) within the period that the

505 information in the notice is considered valid under s.  
506 556.105(1)(c), the excavator must provide a subsequent notice to  
507 the system under s. 556.105(1)(a) to continue with the  
508 excavation, and such subsequent notice shall identify only the  
509 remaining area to be excavated.

510 (3) When an excavation site cannot be described in  
511 information provided under s. 556.105(1)(a) with sufficient  
512 particularity to enable the member operator to ascertain the  
513 excavation site, and if the excavator and member operator have  
514 not mutually agreed otherwise, the excavator shall premark the  
515 proposed area of the excavation before a member operator is  
516 required to identify the horizontal route of its underground  
517 facilities in the proximity of any excavation. However,  
518 premarking is not required when the premarking could reasonably  
519 interfere with traffic or pedestrian control.

520 (4) A member operator shall identify the horizontal route  
521 of its underground facilities as set forth in s. 556.105(5)(a)  
522 and (b), and excavators shall premark an excavation site as set  
523 forth in subsection (3) using flags or stakes or temporary,  
524 nonpermanent paint or other industry-accepted low-impact marking  
525 practices.

526 (5) Any horizontal route-identification marker must be in  
527 a color identified in the Uniform Color Code for Utilities.

528 (6) Sunshine State One-Call of Florida, Inc., shall  
529 establish an educational program for the purpose of informing  
530 excavators and member operators about low-impact marking  
531 practices.

532 Section 9. Section 556.115, Florida Statutes, is created

533 to read:

534 556.115 Alternative dispute resolution.—

535 (1) Sunshine State One-Call of Florida, Inc., shall create  
536 a voluntary alternative dispute resolution program. The program  
537 shall be available to all member operators, excavators, and  
538 other stakeholders, such as locators, utility service users, and  
539 governmental or quasi-governmental entities, for purposes of  
540 resolving disputes arising from excavation activities,  
541 including, but not limited to, loss of services, down time,  
542 delays, loss of use of facilities during restoration or  
543 replacement, and similar economic disruptions, exclusive of  
544 penalties imposed under other provisions of this act.

545 (2) The alternative dispute resolution program created by  
546 Sunshine State One-Call of Florida, Inc., shall include  
547 mediation, arbitration, or other appropriate processes,  
548 including the use of the services of the Division of  
549 Administrative Hearings.

550 (3) The costs of using the program shall be borne by the  
551 voluntary users, and the voluntary users shall choose the form  
552 of alternative dispute resolution to be used. If arbitration is  
553 used, the users shall decide whether the arbitration will be  
554 binding.

555 (4) Unless binding arbitration is the chosen method of  
556 alternative dispute resolution, the users or any one of such  
557 users may end the process at any time and exercise the right to  
558 proceed in a court of competent jurisdiction or before the  
559 Division of Administrative Hearings.

560 (5) This section does not change the basis for civil

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561 liability for damages.

562 Section 10. Section 556.116, Florida Statutes, is created  
563 to read:

564 556.116 High-priority subsurface installations; special  
565 procedures.—

566 (1) As used in this section, the term:

567 (a) "Division" means the Division of Administrative  
568 Hearings.

569 (b) "High-priority subsurface installation" means an  
570 underground gas transmission or gas distribution pipeline, an  
571 underground pipeline used to transport gasoline, jet fuel, or  
572 any other refined petroleum product or hazardous or highly  
573 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
574 the pipeline is deemed to be critical by the operator of the  
575 pipeline and is identified as a high-priority subsurface  
576 installation to an excavator who has provided a notice of intent  
577 to excavate pursuant to s. 556.105(1), or would have been  
578 identified as a high-priority subsurface installation except for  
579 the excavator's failure to give proper notice of intent to  
580 excavate.

581 (c) "Incident" means an event that involves damage to a  
582 high-priority subsurface installation that has been identified  
583 as such by the operator according to the notification procedures  
584 set forth in subsection (2) and that:

585 1. Results in death or serious bodily injury requiring  
586 inpatient hospitalization.

587 2. Results in property damage, including service-  
588 restoration costs, in an amount in excess of \$50,000 or

589 interruption of service to 2,500 or more customers.

590 (2) When an operator proposes to excavate or demolish  
591 within 15 feet of the horizontal route of an underground  
592 facility that has been identified as a high-priority subsurface  
593 installation by the operator of the facility, the operator  
594 shall, in addition to identifying the horizontal route of its  
595 facility as set forth in s. 556.105(5)(a) and (b), and within  
596 the time period set forth in s. 556.105(9)(a) for a positive  
597 response, notify the excavator that the facility is a high-  
598 priority subsurface installation. If the member operator  
599 provides such timely notice of the existence of a high-priority  
600 subsurface installation, an excavator shall notify the operator  
601 of the planned excavation start date and time before beginning  
602 excavation. If the member operator does not provide timely  
603 notice, the excavator may proceed, after waiting the prescribed  
604 time period set forth in s. 556.105(9)(a), to excavate without  
605 notifying the member operator of the excavation start date and  
606 time. The exemptions stated in s. 556.108 apply to the  
607 notification requirements in this subsection.

608 (3)(a) An alleged commission of an infraction listed in s.  
609 556.107(1) which results in an incident must be reported to the  
610 system by a member operator or an excavator within 24 hours  
611 after learning of the alleged occurrence of an incident.

612 (b) Upon receipt of an allegation that an incident has  
613 occurred, the system shall transmit an incident report to the  
614 division and contract with the division so that the division may  
615 conduct a hearing to determine whether an incident has occurred,  
616 and, if so, whether a violation of s. 556.107(1)(a) was a

617 proximate cause of the incident. The contract for services to be  
618 performed by the division must include provisions for the system  
619 to reimburse the division for any costs incurred by the division  
620 for court reporters, transcript preparation, travel, facility  
621 rental, and other customary hearing costs, in the manner set  
622 forth in s. 120.65(11).

623 (c) The division has jurisdiction in a proceeding under  
624 this section to determine the facts and law concerning an  
625 alleged incident. The division may impose a fine against a  
626 violation in an amount not to exceed \$50,000 if the person  
627 violated a provision of s. 556.107(1) (a), and that violation was  
628 a proximate cause of the incident. However, if a state agency or  
629 political subdivision caused the incident, the state agency or  
630 political subdivision may not be fined in an amount in excess of  
631 \$10,000.

632 (d) A fine imposed by the division is in addition to any  
633 amount payable as a result of a citation relating to the  
634 incident under s. 556.107(1) (a).

635 (e) A fine against an excavator or a member operator  
636 imposed under this subsection shall be paid to the system, which  
637 shall use the collected fines to satisfy the costs incurred by  
638 the system for any proceedings under this section. To the extent  
639 there are any funds remaining, the system may use the funds  
640 exclusively for damage-prevention education.

641 (f) This section does not change the basis for civil  
642 liability. The findings and results of a hearing under this  
643 section may not be used as evidence of liability in any civil  
644 action.

645       (4) (a) The division shall issue and serve on all original  
 646 parties an initial order that assigns the case to a specific  
 647 administrative law judge and requests information regarding  
 648 scheduling the final hearing within 5 business days after the  
 649 division receives a petition or request for hearing. The  
 650 original parties in the proceeding include all excavators and  
 651 member operators identified by the system as being involved in  
 652 the alleged incident. The final hearing must be conducted within  
 653 60 days after the date the petition or the request for a hearing  
 654 is filed with the division.

655       (b) Unless the parties otherwise agree, venue for the  
 656 hearing shall be in the county in which the underground facility  
 657 is located.

658       (c) An intervenor in the proceeding must file a petition  
 659 to intervene no later than 15 days before the final hearing. A  
 660 person who has a substantial interest in the proceeding may  
 661 intervene.

662       (5) The following procedures apply:

663       (a) Motions shall be limited to the following:

664       1. A motion in opposition to the petition.

665       2. A motion requesting discovery beyond the informal  
 666 exchange of documents and witness lists described in paragraph

667 (c). Upon a showing of necessity, additional discovery may be  
 668 permitted in the discretion of the administrative law judge, but  
 669 only if the discovery can be completed no later than 5 days  
 670 before the final hearing.

671       3. A motion for continuance of the final hearing date.

672       (b) All parties shall attend a prehearing conference for



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673 the purpose of identifying the legal and factual issues to be  
674 considered at the final hearing, the names and addresses of  
675 witnesses who may be called to testify at the final hearing,  
676 documentary evidence that will be offered at the final hearing,  
677 the range of penalties that may be imposed, and any other matter  
678 that would expedite resolution of the proceeding. The prehearing  
679 conference may be held by telephone conference call.

680 (c) Not later than 5 days before the final hearing, the  
681 parties shall furnish to each other copies of documentary  
682 evidence and lists of witnesses who may testify at the final  
683 hearing.

684 (d) All parties shall have an opportunity to respond, to  
685 present evidence and argument on all issues involved, to conduct  
686 cross-examination and submit rebuttal evidence, and to be  
687 represented by counsel or other qualified representative.

688 (e) The record shall consist only of:

689 1. All notices, pleadings, motions, and intermediate  
690 rulings.

691 2. Evidence received during the final hearing.

692 3. A statement of matters officially recognized.

693 4. Proffers of proof and objections and rulings thereon.

694 5. Matters placed on the record after an ex parte  
695 communication.

696 6. The written final order of the administrative law judge  
697 presiding at the final hearing.

698 7. The official transcript of the final hearing.

699 (f) The division shall accurately and completely preserve  
700 all testimony in the proceeding and, upon request by any party,

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701 shall make a full or partial transcript available at no more  
702 than actual cost.

703 (g) The administrative law judge shall issue a final order  
704 within 30 days after the final hearing or the filing of the  
705 transcript thereof, whichever is later. The final order of the  
706 administrative law judge must include:

707 1. Findings of fact based exclusively on the evidence of  
708 record and matters officially recognized.

709 2. Conclusions of law. In determining whether a party has  
710 committed an infraction of s. 556.107(1)(a), and whether the  
711 infraction was a proximate cause of an incident, the commission  
712 of an infraction must be proven by a preponderance of the  
713 evidence.

714 3. Imposition of a fine, if applicable.

715 4. Any other information required by law or rule to be  
716 contained in a final order.

717

718 The final order of the administrative law judge constitutes  
719 final agency action subject to judicial review pursuant to s.  
720 120.68.

721 Section 11. This act shall take effect October 1, 2010.