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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2010	.	
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The Committee on Communications, Energy, and Public Utilities (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

556.101 Short title; legislative intent.—

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

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this chapter. Municipalities, counties, districts, or other local governments may not adopt or



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13 enforce ordinances or rules that conflict with this chapter or  
14 that prescribe any of the following:

15 1. Require operators of underground facilities to obtain  
16 permits from local governments in order to identify underground  
17 facilities.

18 2. Require premarking or marking.

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

21 4. Require removal of marks.

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

24 556.103 Creation of the corporation; establishment of the  
25 board of directors; authority of the board; annual report.—

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

31 (5) ~~Beginning in 1998,~~ The board of directors shall submit  
32 to the President of the Senate, the Speaker of the House of  
33 Representatives, and the Governor, not later than 60 days before  
34 the convening of each regular session of the Legislature, an  
35 annual progress report on the participation by municipalities  
36 and counties in the one-call notification system created by this  
37 chapter. The report must include a summary of the reports to the  
38 system from the clerks of court.

39 Section 3. Paragraphs (a) and (d) of subsection (1),  
40 subsections (5) and (6), paragraph (a) of subsection (7),  
41 paragraph (a) of subsection (9), and subsection (11) of section



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42 556.105, Florida Statutes, are amended to read:

43 556.105 Procedures.—

44 (1)(a) Not less than 2 full business days before beginning  
45 any excavation or demolition that is not, except an excavation  
46 beneath the waters of the state, and not less than 10 full  
47 business days before beginning any excavation or demolition that  
48 is beneath the waters of the state, an excavator shall provide  
49 the following information through the system:

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

53 2. The name and telephone number of the representative for  
54 the excavator, and a valid electronic address to facilitate a  
55 positive response by the system should be provided, if  
56 available.

57 3. The county, the city or closest city, and the street  
58 address or the closest street, road, or intersection to the  
59 location where the excavation or demolition is to be performed,  
60 and the construction limits of the excavation or demolition.

61 4. The commencement date and anticipated duration of the  
62 excavation or demolition.

63 5. Whether machinery will be used for the excavation or  
64 demolition.

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

66 7. The type of work to be done.

67 8. The approximate depth of the excavation.

68 (d) Member operators shall use the information provided to  
69 the system by other member operators only for the purposes  
70 stated in this chapter and not for sales or marketing purposes.



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71           ~~1. The system shall study the feasibility of the~~  
72 ~~establishment or recognition of zones for the purpose of~~  
73 ~~allowing excavation within such zones to be undertaken without~~  
74 ~~notice to the system as now required by this chapter when such~~  
75 ~~zones are:~~

76           ~~a. In areas within which no underground facilities are~~  
77 ~~located.~~

78           ~~b. Where permanent markings, permit and mapping systems,~~  
79 ~~and structural protection for underwater crossings are required~~  
80 ~~or in place.~~

81           ~~e. For previously marked utilities on construction of one-~~  
82 ~~or two-family dwellings where the contractor remains in custody~~  
83 ~~and control of the building site for the duration of the~~  
84 ~~building permit.~~

85           ~~2. The system shall report the results of the study to the~~  
86 ~~Legislature on or before February 1, 2007, along with~~  
87 ~~recommendations for further legislative action.~~

88           (5) All member operators within the defined area of a  
89 proposed excavation or demolition shall be promptly notified  
90 through the system, except that member operators with state-  
91 owned underground facilities located within the right-of-way of  
92 a state highway need not be notified of excavation or demolition  
93 activities and are under no obligation to mark or locate the  
94 facilities.

95           ~~(a) When an excavation site cannot be described in~~  
96 ~~information provided under subparagraph (1)(a)3. with sufficient~~  
97 ~~particularity to enable the member operator to ascertain the~~  
98 ~~excavation site, and if the excavator and member operator have~~  
99 ~~not mutually agreed otherwise, the excavator shall premark the~~



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100 ~~proposed area of the excavation before a member operator is~~  
101 ~~required to identify the horizontal route of its underground~~  
102 ~~facilities in the proximity of any excavation. However,~~  
103 ~~premarking is not required for any excavation that is over 500~~  
104 ~~feet in length and is not required where the premarking could~~  
105 ~~reasonably interfere with traffic or pedestrian control.~~

106       (a) ~~(b)~~ If a member operator determines that a proposed  
107 excavation or demolition is in proximity to or in conflict with  
108 an underground facility of the member operator, except a  
109 facility beneath the waters of the state, which is governed by  
110 paragraph (b) ~~(e)~~, the member operator shall identify the  
111 horizontal route by marking to within 24 inches from the outer  
112 edge of either side of the underground facility by the use of  
113 stakes, paint, flags, or other suitable means within 2 full  
114 business days after the time the notification is received under  
115 subsection (1). If the member operator is unable to respond  
116 within such time, the member operator shall communicate with the  
117 person making the request and negotiate a new schedule and time  
118 that is agreeable to, and should not unreasonably delay, the  
119 excavator.

120       (b) ~~(e)~~ If a member operator determines that a proposed  
121 excavation is in proximity to or in conflict with an underground  
122 facility of the member operator beneath the waters of the state,  
123 the member operator shall identify the estimated horizontal  
124 route of the underground facility, within 10 business days,  
125 using marking buoys or other suitable devices, unless directed  
126 otherwise by an agency having jurisdiction over the waters of  
127 the state under which the member operator's underground facility  
128 is located.



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129        (c) ~~(d)~~ When excavation is to take place within a tolerance  
130 zone, an excavator shall use increased caution to protect  
131 underground facilities. The protection requires hand digging,  
132 pot holing, soft digging, vacuum excavation methods, or other  
133 similar procedures to identify underground facilities. Any use  
134 of mechanized equipment within the tolerance zone must be  
135 supervised by the excavator.

136        (6) (a) An excavator shall avoid excavation in the area  
137 described in the notice given under subsection (1) until each  
138 member operator underground facility has been marked and located  
139 or until the excavator has been notified that no member operator  
140 has underground facilities in the area described in the notice,  
141 or for the time allowed for markings set forth in paragraphs  
142 (5) (a) and (b) ~~(5) (b) and (c)~~, whichever occurs first. If a  
143 member operator has not located and marked its underground  
144 facilities within the time allowed for marking set forth in  
145 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, the excavator may  
146 proceed with the excavation, if the excavator does so with  
147 reasonable care and if detection equipment or other acceptable  
148 means to locate underground facilities are used.

149        (b) An excavator may not demolish in the area described in  
150 the notice given under subsection (1) until all member operator  
151 underground facilities have been marked and located or removed.

152        (7) (a) A member operator that states that it does not have  
153 accurate information concerning the exact location of its  
154 underground facilities is exempt from the requirements of  
155 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the  
156 best available information to the excavator in order to comply  
157 with the requirements of this section. An excavator is not



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158 liable for any damage to an underground facility under the  
159 exemption in this subsection if the excavation or demolition is  
160 performed with reasonable care and detection equipment or other  
161 acceptable means to locate underground facilities are used.

162 (9) (a) After receiving notification from the system, a  
163 member operator shall provide a positive response to the system  
164 within 2 full business days, or 10 such days for an underwater  
165 excavation or demolition, indicating the status of operations to  
166 protect the facility.

167 (11) Before or during excavation or demolition, if the  
168 marking of the horizontal route of any facility is removed or is  
169 no longer visible, or, in the case of an underwater facility, is  
170 inadequately documented, the excavator shall stop excavation or  
171 demolition activities in the vicinity of the facility and shall  
172 notify the system to have the route remarked or adequately  
173 documented by a member operator or in a manner approved by the  
174 member operator.

175 Section 4. Section 556.106, Florida Statutes, is amended to  
176 read:

177 556.106 Liability of the member operator, excavator, and  
178 system.—

179 (1) There is no liability on the part of, and no cause of  
180 action of any nature shall arise against, the board members of  
181 the corporation in their capacity as administrators of the  
182 system.

183 (2) (a) If a person violates s. 556.105(1) or (6), and  
184 subsequently, whether by himself or herself or through the  
185 person's employees, contractors, subcontractors, or agents,  
186 performs an excavation or demolition that damages an underground



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187 facility of a member operator, it is rebuttably presumed that  
188 the person was negligent. The person, if found liable, is liable  
189 for the total sum of the losses to all member operators involved  
190 as those costs are normally computed. Any damage for loss of  
191 revenue and loss of use may not exceed \$500,000 per affected  
192 underground facility, except that revenues lost by a  
193 governmental member operator whose revenues are used to support  
194 payments on principal and interest on bonds may not be limited.  
195 ~~Any liability of the state and its agencies and its subdivisions~~  
196 ~~which arises out of this chapter is subject to the provisions of~~  
197 ~~s. 768.28.~~

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

206 ~~(c) Any liability of the state, its agencies, or its~~  
207 ~~subdivisions which arises out of this chapter is subject to the~~  
208 ~~provisions of s. 768.28.~~

209 (c) ~~(d)~~ Obtaining information as to the location of an  
210 underground facility from the member operator as required by  
211 this chapter does not excuse any excavator from performing an  
212 excavation or demolition in a careful and prudent manner, based  
213 on accepted engineering and construction practices, and it does  
214 not excuse the excavator from liability for any damage or injury  
215 resulting from any excavation or demolition.





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216 (3) If, after receiving proper notice, a member operator  
217 fails to discharge a duty imposed by ~~the provisions of~~ this act  
218 and an underground facility of a ~~such~~ member operator is damaged  
219 by an excavator who has complied with ~~the provisions of~~ this  
220 act, as a proximate result of the member operator's failure to  
221 discharge such duty, the ~~such~~ excavator is ~~shall~~ not be liable  
222 for such damage and the member operator, if found liable, is  
223 ~~shall be~~ liable to such person for the total cost of any loss or  
224 injury to any person or damage to equipment resulting from the  
225 member operator's failure to comply with this act. Any damage  
226 for loss of revenue and loss of use shall not exceed \$500,000  
227 per affected underground facility, except that revenues lost by  
228 a governmental member operator, which revenues are used to  
229 support payments on principal and interest on bonds, shall not  
230 be limited. ~~The liability of governmental member operators shall~~  
231 ~~be subject to limitations provided in chapter 768.~~

232 (4) If an owner of an underground facility fails to become  
233 a member of the corporation in order to use and participate in  
234 the system, as required by this act, and that failure is a cause  
235 of damage to that underground facility caused by an excavator  
236 who has complied with ~~the provisions of~~ this act and has  
237 exercised reasonable care in the performance of the excavation  
238 that has caused damage to the underground facility, the owner  
239 has no right of recovery against the excavator for the damage to  
240 that underground facility.

241 (5) If, after receiving proper notification, the system  
242 fails to discharge its duties, resulting in damage to an  
243 underground facility, the system, if found liable, shall be  
244 liable to all parties, as defined in this act. Any damage for



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245 loss of revenue and loss of use shall not exceed \$500,000 per  
246 affected underground facility, except that revenues lost by a  
247 governmental member operator, which revenues are used to support  
248 payments on principal and interest on bonds, shall not be  
249 limited.

250 (6) The system does not have a duty to mark or locate  
251 underground facilities and may not do so, and a right of  
252 recovery does not exist against the system for failing to mark  
253 or locate underground facilities. The system is not liable for  
254 the failure of a member operator to comply with the requirements  
255 of this chapter.

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

260 (8) Any liability of the state, a state agency, or a  
261 political subdivision which arises out of this chapter is  
262 subject to the provisions of s. 768.28.

263 Section 5. Section 556.107, Florida Statutes, is amended to  
264 read:

265 556.107 Violations.—

266 (1) NONCRIMINAL INFRACTIONS.—

267 (a) Violations of the following provisions are noncriminal  
268 infractions:

269 1. Section 556.105(1), relating to providing required  
270 information.

271 2. Section 556.105(6), relating to the avoidance of  
272 excavation.

273 3. Section 556.105(11), relating to the need to stop



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274 excavation or demolition because marks are no longer visible,  
275 or, in the case of underwater facilities, are inadequately  
276 documented.

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

280 5. Section 556.105(5) (a) and (b), ~~556.105(5) (b) and (c)~~  
281 relating to identification of underground facilities, if a  
282 member operator does not mark an underground facility, but not  
283 if a member operator marks an underground facility incorrectly.

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

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

289 (b) Any excavator or member operator who commits a  
290 noncriminal infraction under paragraph (a) may be issued a  
291 citation by any local or state law enforcement officer,  
292 government code inspector, or code enforcement officer, and the  
293 issuer of a citation may require an excavator to cease work on  
294 any excavation or not start a proposed excavation until there  
295 has been compliance with the provisions of this chapter.  
296 Citations shall be hand delivered to any employee of the  
297 excavator or member operator who is involved in the noncriminal  
298 infraction. The citation shall be issued in the name of the  
299 excavator or member operator, whichever is applicable.

300 (c) Any excavator or member operator who commits a  
301 noncriminal infraction under paragraph (a) may be required to  
302 pay a ~~appear before the county court.~~ The civil penalty for each



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303 ~~any such~~ infraction, which is \$500 ~~\$250~~ plus court costs, ~~except~~  
304 ~~as otherwise provided in this section~~. If a citation is issued  
305 by a local law enforcement officer, a local government code  
306 inspector, or a code enforcement officer, 80 percent of the  
307 civil penalty collected by the clerk of the court shall be  
308 distributed to the local governmental entity whose employee  
309 issued the citation and 20 percent of the penalty shall be  
310 retained by the clerk to cover administrative costs, in addition  
311 to other court costs. If a citation is issued by a state law  
312 enforcement officer, the civil penalty collected by the clerk  
313 shall be retained by the clerk for deposit into the fine and  
314 forfeiture fund established pursuant to s. 142.01. Any person  
315 who fails to ~~appear or otherwise~~ properly respond to a citation  
316 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the  
317 citation, be charged with the offense of failing to respond to  
318 the ~~such~~ citation and, upon conviction, commits a misdemeanor of  
319 the second degree, punishable as provided in s. 775.082 or s.  
320 775.083. A written warning to this effect must ~~shall~~ be provided  
321 at the time any citation is issued pursuant to paragraph (b).

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

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

326 2. ~~Sign and accept a citation indicating a promise to~~  
327 ~~appear before the county court.~~

328  
329 ~~The person issuing the citation may indicate on the citation the~~  
330 ~~time and location of the scheduled hearing and shall indicate~~  
331 ~~the applicable civil penalty.~~



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332 (e) A ~~Any~~ person charged with a noncriminal infraction  
333 under paragraph (a), ~~unless required to appear before the county~~  
334 ~~court,~~ may:

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

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

340  
341 If the person cited pays the civil penalty ~~follows either of the~~  
342 ~~above procedures,~~ she or he is deemed to have admitted to  
343 committing the infraction and to have waived the right to a  
344 hearing on the issue of commission of the infraction. The  
345 admission may be used as evidence in any other proceeding under  
346 this chapter.

347 (f) Any person may elect ~~electing~~ to appear before the  
348 county court and if so electing ~~or who is required to appear~~  
349 ~~shall be~~ deemed to have waived the limitations on the civil  
350 penalty specified in paragraph (c). The court, after a hearing,  
351 shall make a determination as to whether an infraction has been  
352 committed. If the commission of an infraction has been proven,  
353 the court may impose a civil penalty not to exceed \$5,000 plus  
354 court costs. In determining the amount of the civil penalty, the  
355 court may consider previous noncriminal infractions committed.

356 (g) At a court hearing under this chapter, the commission  
357 of a charged infraction must be proven by a preponderance of the  
358 evidence.

359 (h) If a person is found by a judge or ~~the~~ hearing official  
360 to have committed an infraction, the person may appeal that



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361 finding to the circuit court.

362 (i) Sunshine State One-Call of Florida, Inc., may, at its  
363 own cost, retain an attorney to assist in the presentation of  
364 relevant facts and law in the county court proceeding pertaining  
365 to the citation issued under this section. The corporation may  
366 also appear in any case appealed to the circuit court if a  
367 county court judge finds that an infraction of the chapter was  
368 committed. An appellant in the circuit court proceeding shall  
369 timely notify the corporation of any appeal under this section.

370 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
371 clerk of court shall submit a report to Sunshine State One-Call  
372 of Florida, Inc., listing each violation notice written under  
373 paragraph (a) which has been filed in that county during the  
374 preceding calendar year. The report must state the name and  
375 address of the member or excavator who committed each infraction  
376 and indicate whether or not the civil penalty for the infraction  
377 was paid.

378 (3)~~(2)~~ MISDEMEANORS.—Any person who knowingly and willfully  
379 removes or otherwise destroys the valid stakes or other valid  
380 physical markings described in s. 556.105(5) (a) and (b) ~~s.~~  
381 ~~556.105(5) (b) and (c)~~ used to mark the horizontal route of an  
382 underground facility commits a misdemeanor of the second degree,  
383 punishable as provided in s. 775.082 or s. 775.083. For purposes  
384 of this subsection, stakes or other nonpermanent physical  
385 markings are considered valid for 30 calendar days after  
386 information is provided to the system under s. 556.105(1) (a) ~~s.~~  
387 ~~556.105(1) (c)~~.

388 Section 6. Section 556.109, Florida Statutes, is amended to  
389 read:



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390           556.109 Emergency excavations or demolitions attempted;  
391 exception.—

392           (1) The provisions of This act does ~~de~~ not apply to making  
393 an excavation or demolition during an emergency if, provided the  
394 system or the member operator was notified at the earliest  
395 opportunity and all reasonable precautions had been taken to  
396 protect any underground facility. For the purposes of this act,  
397 “emergency” means any condition constituting a clear and present  
398 danger to life or property; a situation caused by the escape of  
399 any substance transported by means of an underground facility;  
400 any interruption of vital public service or communication caused  
401 by any break or defect in a member operator’s underground  
402 facility; or, in the case of the State Highway System or streets  
403 or roads maintained by a political subdivision or underground  
404 facilities owned, operated, or maintained by a political  
405 subdivision, if the use of such highways, streets, roads, or  
406 underground facilities is, in the sole judgment of the  
407 Department of Highway Safety and Motor Vehicles, the Department  
408 of Transportation, or such political subdivision, impaired by an  
409 unforeseen occurrence that which necessitates repair beginning  
410 immediately after such occurrence.

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

415           Section 7. Section 556.110, Florida Statutes, is amended to  
416 read:

417           556.110 Costs assessed among member operators.—Member  
418 operators shall proportionately share in the cost of operating



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419 the system through monthly assessments made upon each member  
420 operator. ~~However, any member that receives fewer than 10~~  
421 ~~notifications in any month shall not be assessed for such month.~~

422 Section 8. Section 556.114, Florida Statutes, is created to  
423 read:

424 556.114 Low-impact marking practices.-

425 (1) An excavator providing notice under s. 556.105(1) (a)  
426 shall identify in its notice only the area that will be  
427 excavated during the period that the information in such notice  
428 is considered valid under s. 556.105(1) (c).

429 (2) When an excavator has not completed an excavation  
430 noticed under s. 556.105(1) (a) within the period that the  
431 information in the notice is considered valid under s.  
432 556.105(1) (c), the excavator must provide a subsequent notice to  
433 the system under s. 556.105(1) (a) to continue with the  
434 excavation, and such subsequent notice shall identify only the  
435 remaining area to be excavated.

436 (3) When an excavation site cannot be described in  
437 information provided under s. 556.105(1) (a) with sufficient  
438 particularity to enable the member operator to ascertain the  
439 excavation site, and if the excavator and member operator have  
440 not mutually agreed otherwise, the excavator shall premark the  
441 proposed area of the excavation before a member operator is  
442 required to identify the horizontal route of its underground  
443 facilities in the proximity of any excavation. However,  
444 premarking is not required when the premarking could reasonably  
445 interfere with traffic or pedestrian control.

446 (4) A member operator shall identify the horizontal route  
447 of its underground facilities as set forth in s. 556.105(1) (a)





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448 and (b), and excavators shall premark an excavation site as set  
449 forth in subsection (3) using flags or stakes or temporary, non-  
450 permanent paint or other industryaccepted low-impact marking  
451 practices.

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

454 (6) Sunshine State One-Call of Florida, Inc., shall  
455 establish an educational program for the purpose of informing  
456 excavators and member operators about low-impact marking  
457 practices.

458 Section 9. Section 556.115, Florida Statutes, is created to  
459 read:

460 556.115 Alternative dispute resolution.-

461 (1) Sunshine State One-Call of Florida, Inc., shall create  
462 a voluntary alternative dispute resolution program. The program  
463 shall be available to all member operators, excavators, and  
464 other stakeholders, such as locators, utility service users, and  
465 governmental or quasi-governmental entities, for purposes of  
466 resolving disputes arising from excavation activities,  
467 including, but not limited to, loss of services, down time,  
468 delays, loss of use of facilities during restoration or  
469 replacement, and similar economic disruptions, exclusive of  
470 penalties imposed under other provisions of this act.

471 (2) The alternative dispute resolution program created by  
472 Sunshine State One-Call of Florida, Inc., shall include  
473 mediation, arbitration, or other appropriate processes,  
474 including the use of the services of the Division of  
475 Administrative Hearings.

476 (3) The costs of using the program shall be borne by the



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477 voluntary users, and the voluntary users shall choose the form  
478 of alternative dispute resolution to be used. If arbitration is  
479 used, the users shall decide whether the arbitration will be  
480 binding.

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

486 (5) This section does not change the basis for civil  
487 liability for damages.

488 Section 10. Section 556.116, Florida Statutes, is created  
489 to read:

490 556.116 High-priority subsurface installations; special  
491 procedures.—

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

493 (a) "Division" means the Division of Administrative  
494 Hearings.

495 (b) "High-priority subsurface installation" means an  
496 underground gas transmission or gas distribution pipeline, an  
497 underground pipeline used to transport gasoline, jet fuel, or  
498 any other refined petroleum product or hazardous or highly  
499 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
500 the pipeline is deemed to be critical by the operator of the  
501 pipeline and is identified as a high-priority subsurface  
502 installation to an excavator who has provided a notice of intent  
503 to excavate pursuant to s. 556.105(1), or would have been  
504 identified as a high-priority subsurface installation except for  
505 the excavator's failure to give proper notice of intent to



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506 excavate.

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

511 1. Results in death or serious bodily injury requiring  
512 inpatient hospitalization.

513 2. Results in property damage, including service-  
514 restoration costs, in an amount in excess of \$50,000 or  
515 interruption of service to 2,500 or more customers.

516 (2) When an operator proposes to excavate or demolish  
517 within 15 feet of the horizontal route of an underground  
518 facility that has been identified as a high-priority subsurface  
519 installation by the operator of the facility, the operator  
520 shall, in addition to identifying the horizontal route of its  
521 facility as set forth in s. 556.105(5)(a) and (b), and within  
522 the time period set forth in s. 556.105(9)(a) for a positive  
523 response, notify the excavator that the facility is a high-  
524 priority subsurface installation. If the member operator  
525 provides such timely notice of the existence of a high-priority  
526 subsurface installation, an excavator shall notify the operator  
527 of the planned excavation start date and time before beginning  
528 excavation. If the member operator does not provide timely  
529 notice, the excavator may proceed, after waiting the prescribed  
530 time period set forth in s. 556.105(9)(a), to excavate without  
531 notifying the member operator of the excavation start date and  
532 time. The exemptions stated in s. 556.108 apply to the  
533 notification requirements in this subsection.

534 (3)(a) An alleged commission of an infraction listed in s.



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535 556.107(1) which results in an incident must be reported to the  
536 system by a member operator or an excavator within 24 hours  
537 after learning of the alleged occurrence of an incident.

538 (b) Upon receipt of an allegation that an incident has  
539 occurred, the system shall transmit an incident report to the  
540 division and contract with the division so that the division may  
541 conduct a hearing to determine whether an incident has occurred,  
542 and, if so, whether a violation of s. 556.107(1) (a), was a  
543 proximate cause of the incident. The contract for services to be  
544 performed by the division must include provisions for the system  
545 to reimburse the division for any costs incurred by the division  
546 for court reporters, transcript preparation, travel, facility  
547 rental, and other customary hearing costs, in the manner set  
548 forth in s. 120.65(11).

549 (c) The division has jurisdiction in a proceeding under  
550 this section to determine the facts and law concerning an  
551 alleged incident. The division may impose a fine against a  
552 violator in an amount not to exceed \$50,000 if the person  
553 violated a provision of s. 556.107(1) (a), and that violation was  
554 a proximate cause of the incident. However, if a state agency or  
555 political subdivision caused the incident, the state agency or  
556 political subdivision may not be fined in an amount in excess of  
557 \$10,000.

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

561 (e) A fine against an excavator or a member operator  
562 imposed under this subsection shall be paid to the system, which  
563 shall use the collected fines to satisfy the costs incurred by



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564 the system for any proceedings under this section. To the extent  
565 there are any funds remaining, the system may use the funds  
566 exclusively for damage-prevention education.

567 (f) This section does not change the basis for civil  
568 liability. The findings and results of a hearing under this  
569 section may not be used as evidence of liability in any civil  
570 action.

571 (4) (a) The division shall issue and serve on all original  
572 parties an initial order that assigns the case to a specific  
573 administrative law judge and requests information regarding  
574 scheduling the final hearing within 5 business days after the  
575 division receives a petition or request for hearing. The  
576 original parties in the proceeding includes all excavators and  
577 member operators identified by the system as being involved in  
578 the alleged incident. The final hearing must be conducted within  
579 60 days after the date the petition or the request for a hearing  
580 is filed with the division.

581 (b) Unless the parties otherwise agree, venue for the  
582 hearing shall be in the county in which the underground facility  
583 is located.

584 (c) An intervenor in the proceeding must file a petition to  
585 intervene no later than 15 days before the final hearing. A  
586 person who has a substantial interest in the proceeding may  
587 intervene.

588 (5) The following procedures apply:

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

590 1. A motion in opposition to the petition.

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



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

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

598 (b) All parties shall attend a prehearing conference for  
599 the purpose of identifying the legal and factual issues to be  
600 considered at the final hearing, the names and addresses of  
601 witnesses who may be called to testify at the final hearing,  
602 documentary evidence that will be offered at the final hearing,  
603 the range of penalties that may be imposed, and any other matter  
604 that would expedite resolution of the proceeding. The prehearing  
605 conference may be held by telephone conference call.

606 (c) Not later than 5 days before the final hearing the  
607 parties shall furnish to each other copies of documentary  
608 evidence and lists of witnesses who may testify at the final  
609 hearing.

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

614 (e) The record shall consist only of:

615 1. All notices, pleadings, motions, and intermediate  
616 rulings.

617 2. Evidence received during the final hearing.

618 3. A statement of matters officially recognized.

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

620 5. Matters placed on the record after an ex parte  
621 communication.



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622           6. The written final order of the administrative law judge  
623 presiding at the final hearing.

624           7. The official transcript of the final hearing.

625           (f) The division shall accurately and completely preserve  
626 all testimony in the proceeding and, upon request by any party,  
627 shall make a full or partial transcript available at no more  
628 than actual cost.

629           (g) The administrative law judge shall issue a final order  
630 within 30 days after the final hearing or the filing of the  
631 transcript thereof, whichever is later. The final order of the  
632 administrative law judge must include:

633           1. Findings of fact based exclusively on the evidence of  
634 record and matters officially recognized.

635           2. Conclusions of law. In determining whether a party has  
636 committed an infraction of s. 556.107(1)(a), and whether the  
637 infraction was a proximate cause of an incident, the commission  
638 of an infraction must be proven by a preponderance of the  
639 evidence.

640           3. Imposition of a fine, if applicable.

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

643  
644 The final order of the administrative law judge constitutes  
645 final agency action subject to judicial review pursuant to s.  
646 120.68.

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

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649 ===== T I T L E   A M E N D M E N T =====

650 And the title is amended as follows:



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Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to underground facility damage  
prevention and safety; amending s. 556.101, F.S.;  
prohibiting municipalities, counties, districts, and  
other local governments from enacting ordinances or  
rules that conflict with ch. 556, F.S.; amending s.  
556.103, F.S.; requiring that the board of directors  
of Sunshine State One-Call of Florida, Inc., present  
to the Governor and Legislature an annual report that  
includes a summary of reports issued by the clerks of  
court; amending s. 556.105, F.S.; requiring that an  
excavator provide the Sunshine State One-Call of  
Florida, Inc., system with certain specified  
information not less than 10 full business days before  
beginning an excavation or demolition beneath the  
waters of the state; prohibiting the use of such  
information by member operators for sales or marketing  
purposes; deleting obsolete provisions; removing  
provisions requiring the premarking of certain  
proposed excavation sites; requiring a mutually agreed  
excavation plan for high-priority excavations;  
amending s. 556.106, F.S.; removing redundant  
provisions that provide a limited waiver of sovereign  
immunity for the state and its agencies and  
subdivisions arising from matters involving  
underground facilities; amending s. 556.107, F.S.;





680 providing increased penalties for noncriminal  
681 infractions of the Sunshine State One-Call of Florida,  
682 Inc., system; requiring each clerk of court to submit  
683 a report to Sunshine State One-Call of Florida, Inc.,  
684 by a specified date listing each violation that has  
685 been filed in the county during the preceding calendar  
686 year; amending s. 556.109, F.S.; specifying  
687 circumstances under which an excavator shall not  
688 notify the Sunshine State One-Call of Florida, Inc.,  
689 system that there is an emergency; amending s.  
690 556.110, F.S.; deleting a provision that limits  
691 assessments against a member operator who receives  
692 fewer than 10 notifications in any month; creating s.  
693 556.114, F.S.; providing requirements for low-impact  
694 marking practices; providing procedures and methods to  
695 mark areas of excavation; requiring Sunshine State  
696 One-Call of Florida, Inc., to establish an educational  
697 program for the purpose of informing excavators and  
698 member operators about low-impact marking practices;  
699 creating s. 556.115, F.S.; requiring Sunshine State  
700 One-Call of Florida, Inc., to create a voluntary  
701 alternative dispute resolution program that is open to  
702 all member operators, excavators, and other  
703 stakeholders; requiring the voluntary users of the  
704 alternative dispute resolution program to choose the  
705 form of alternative dispute resolution to be used;  
706 requiring that the costs of using the voluntary  
707 program be borne by the users; providing that unless  
708 binding arbitration is the chosen method of



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709 alternative dispute resolution, the users or any one  
710 of such users may end the process at any time and  
711 proceed in a court of competent jurisdiction or before  
712 the Division of Administrative Hearings; creating s.  
713 556.116, F.S.; defining the terms "high-priority  
714 subsurface installations" and "incident"; providing  
715 that if an excavation is proposed within 15 feet of a  
716 high-priority subsurface installation and is  
717 identified as such by the facility operator, the  
718 facility operator must notify the excavator of the  
719 existence of the high-priority subsurface installation  
720 and mark its location before excavation may begin;  
721 requiring an excavator to notify the operator of the  
722 excavation start time in the vicinity of a high-  
723 priority subsurface installation; providing that an  
724 alleged infraction that results in an incident must be  
725 reported to the system by an operator or an excavator;  
726 providing that the system shall transmit incident  
727 reports to the Division of Administrative Hearings;  
728 providing that the system and the division may  
729 contract for the division to conduct proceedings;  
730 providing that the division has jurisdiction to  
731 determine the facts and law concerning an alleged  
732 incident; authorizing the division to impose a fine on  
733 a violator if the violation was a proximate cause of  
734 the incident; providing procedures, venue, and  
735 standard of proof; providing an effective date.