

By Senator Bennett

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1 A bill to be entitled
2 An act relating to underground facility damage
3 prevention and safety; amending s. 556.101, F.S.;
4 clarifying legislative intent that the state has
5 exclusive power to regulate underground facilities;
6 prohibiting municipalities, counties, districts, and
7 other local governments from enacting ordinances or
8 rules that regulate the subject of underground
9 facilities; amending s. 556.102, F.S.; defining the
10 terms "high-priority subsurface installations" and
11 "incident"; amending s. 556.103, F.S.; requiring that
12 the board of directors of Sunshine State One-Call of
13 Florida, Inc., present to the Governor and Legislature
14 an annual report that includes a summary of reports
15 issued by the clerks of court; amending s. 556.105,
16 F.S.; requiring that an excavator provide the Sunshine
17 State One-Call of Florida, Inc., system with certain
18 specified information not less than 10 full business
19 days before beginning an excavation or demolition
20 beneath the waters of the state; prohibiting the use
21 of such information by member operators for sales or
22 marketing purposes; deleting obsolete provisions;
23 removing provisions requiring the premarking of
24 certain proposed excavation sites; providing that if
25 an excavation is proposed which is within 10 feet of a
26 high-priority subsurface installation and is
27 identified as a high-priority subsurface installation
28 by the operator, the operator must notify the
29 excavator of the existence of the high-priority

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30 subsurface installation and mark its location before
31 the legal excavation start time; requiring a mutually
32 agreed excavation plan for high-priority excavations;
33 amending s. 556.106, F.S.; removing provisions that
34 provide a limited waiver of sovereign immunity for the
35 state and its agencies and subdivisions arising from
36 matters involving underground facilities; amending s.
37 556.107, F.S.; providing penalties for noncriminal
38 infractions of the Sunshine State One-Call of Florida,
39 Inc., system; providing a civil penalty for each
40 infraction; detailing procedures for citations;
41 requiring each clerk of court to submit a report to
42 Sunshine State One-Call of Florida, Inc., by a
43 specified date listing each violation that has been
44 filed in the county during the preceding calendar
45 year; amending s. 556.109, F.S.; specifying
46 circumstances under which an excavator need not notify
47 the Sunshine State One-Call of Florida, Inc., system
48 that there is an emergency; amending s. 556.110, F.S.;
49 deleting a provision that limits assessments against a
50 member operator who receives fewer than 10
51 notifications in any month; creating s. 556.114, F.S.;
52 providing requirements for low-impact marking
53 practices; providing procedures and methods to mark
54 areas of excavation; requiring Sunshine State One-Call
55 of Florida, Inc., to establish an educational program
56 for the purpose of informing excavators and member
57 operators about low-impact marking practices; creating
58 s. 556.115, F.S.; requiring Sunshine State One-Call of

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59 Florida, Inc., to create a voluntary alternative
60 dispute resolution program that is open to all member
61 operators, excavators, and other stakeholders;
62 requiring the voluntary users of the alternative
63 dispute resolution program to choose the form of
64 alternative dispute resolution to be used; requiring
65 that the costs of using the voluntary program be borne
66 by the users; providing that unless binding
67 arbitration is the chosen method of alternative
68 dispute resolution, the users or any one of such users
69 may end the process at any time and proceed in a court
70 of competent jurisdiction or before the Division of
71 Administrative Hearings; providing an effective date.

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. Paragraph (d) of subsection (3) of section
76 556.101, Florida Statutes, is amended to read:

77 556.101 Short title; legislative intent.—

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

79 (d) Reserve and preempt to the state the exclusive power to
80 regulate any subject matter specifically addressed in this
81 chapter. Municipalities, counties, districts, or other local
82 governments may not enact ordinances or rules or take other
83 actions that regulate any subject addressed in this chapter or
84 by Sunshine State One-Call of Florida, Inc., under this chapter,
85 including delegations of authority to Sunshine State One-Call of
86 Florida, Inc. Any ordinance or rule in existence on June 30,
87 2010, which is in conflict with this chapter is no longer valid

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88 or enforceable on or after July 1, 2010.

89 Section 2. Present subsections (8) through (14) of section
90 556.102, Florida Statutes, are renumbered as subsections (10)
91 through (16), respectively, and new subsections (8) and (9) are
92 added to that section, to read:

93 556.102 Definitions.—As used in this act:

94 (8) "High-priority subsurface installations" means certain
95 gas transmission, gas distribution, gasoline, petroleum, and
96 other flammable, explosive, or corrosive commodity pipelines
97 that are deemed to be critical by the operators of those
98 pipelines.

99 (9) "Incident" means an event that involves damage to an
100 underground facility in a high-priority zone which results in
101 death or personal injury that requires inpatient hospitalization
102 or causes property damage, including service-restoration costs
103 in an amount in excess of \$50,000 or interruption of service to
104 more than 2,500 customers.

105 Section 3. Subsections (4) and (5) of section 556.103,
106 Florida Statutes, are amended to read:

107 556.103 Creation of the corporation; establishment of the
108 board of directors; authority of the board; annual report.—

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

114 ~~(5) Beginning in 1998,~~ The board of directors shall submit
115 to the President of the Senate, the Speaker of the House of
116 Representatives, and the Governor, not later than 60 days before

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117 the convening of each regular session of the Legislature, an
118 annual progress report on the participation by municipalities
119 and counties in the one-call notification system created by this
120 chapter. The report must include a summary of the reports to the
121 system from the clerks of court.

122 Section 4. Paragraphs (a) and (d) of subsection (1),
123 subsections (5) and (6), paragraph (a) of subsection (7),
124 paragraph (a) of subsection (9), and subsection (11) of section
125 556.105, Florida Statutes, are amended to read:

126 556.105 Procedures.—

127 (1)(a) Not less than 2 full business days before beginning
128 any excavation or demolition that is not, ~~except an excavation~~
129 ~~beneath the waters of the state,~~ and not less than 10 full
130 business days before beginning any excavation or demolition that
131 is beneath the waters of the state, an excavator shall provide
132 the following information through the system:

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

136 2. The name and telephone number of the representative for
137 the excavator, and a valid electronic address to facilitate a
138 positive response by the system should be provided, if
139 available.

140 3. The county, the city or closest city, and the street
141 address or the closest street, road, or intersection to the
142 location where the excavation or demolition is to be performed,
143 and the construction limits of the excavation or demolition.

144 4. The commencement date and anticipated duration of the
145 excavation or demolition.

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146 5. Whether machinery will be used for the excavation or
147 demolition.

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

149 7. The type of work to be done.

150 8. The approximate depth of the excavation.

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

154 ~~1. The system shall study the feasibility of the~~
155 ~~establishment or recognition of zones for the purpose of~~
156 ~~allowing excavation within such zones to be undertaken without~~
157 ~~notice to the system as now required by this chapter when such~~
158 ~~zones are:~~

159 a. ~~In areas within which no underground facilities are~~
160 ~~located.~~

161 b. ~~Where permanent markings, permit and mapping systems,~~
162 ~~and structural protection for underwater crossings are required~~
163 ~~or in place.~~

164 e. ~~For previously marked utilities on construction of one-~~
165 ~~or two-family dwellings where the contractor remains in custody~~
166 ~~and control of the building site for the duration of the~~
167 ~~building permit.~~

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

171 (5) All member operators within the defined area of a
172 proposed excavation or demolition shall be promptly notified
173 through the system, except that member operators with state-
174 owned underground facilities located within the right-of-way of

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175 a state highway need not be notified of excavation or demolition
176 activities and are under no obligation to mark or locate the
177 facilities.

178 ~~(a) When an excavation site cannot be described in~~
179 ~~information provided under subparagraph (1)(a)3. with sufficient~~
180 ~~particularity to enable the member operator to ascertain the~~
181 ~~excavation site, and if the excavator and member operator have~~
182 ~~not mutually agreed otherwise, the excavator shall premark the~~
183 ~~proposed area of the excavation before a member operator is~~
184 ~~required to identify the horizontal route of its underground~~
185 ~~facilities in the proximity of any excavation. However,~~
186 ~~premarking is not required for any excavation that is over 500~~
187 ~~feet in length and is not required where the premarking could~~
188 ~~reasonably interfere with traffic or pedestrian control.~~

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

203 (b) ~~(e)~~ If a member operator determines that a proposed

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204 excavation is in proximity to or in conflict with an underground
205 facility of the member operator beneath the waters of the state,
206 the member operator shall identify the estimated horizontal
207 route of the underground facility, within 10 business days,
208 using marking buoys or other suitable devices, unless directed
209 otherwise by an agency having jurisdiction over the waters of
210 the state under which the member operator's underground facility
211 is located.

212 (c) ~~(d)~~ When excavation is to take place within a tolerance
213 zone, an excavator shall use increased caution to protect
214 underground facilities. The protection requires hand digging,
215 pot holing, soft digging, vacuum excavation methods, or other
216 similar procedures to identify underground facilities. Any use
217 of mechanized equipment within the tolerance zone must be
218 supervised by the excavator.

219 (d) If an excavation is proposed which is within 10 feet of
220 a high-priority subsurface installation and is identified as a
221 high-priority subsurface installation by the operator, the
222 operator shall notify the excavator of the existence of the
223 high-priority subsurface installation and shall mark its
224 location before the legal excavation start time, as set forth in
225 paragraphs (a) and (b). After receiving notice of the existence
226 of a high-priority subsurface installation, an excavator shall
227 provide notice to the operator of the planned excavation start
228 date and time. Before excavation begins, the excavator and
229 operator shall communicate in order to establish a mutually
230 agreed-upon excavation plan.

231 (6) (a) An excavator shall avoid excavation in the area
232 described in the notice given under subsection (1) until each

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233 member operator underground facility has been marked and located
234 or until the excavator has been notified that no member operator
235 has underground facilities in the area described in the notice,
236 or for the time allowed for markings set forth in paragraphs
237 (5) (a) and (b) ~~(5) (b) and (c)~~, whichever occurs first. If a
238 member operator has not located and marked its underground
239 facilities within the time allowed for marking set forth in
240 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, the excavator may
241 proceed with the excavation, if the excavator does so with
242 reasonable care and if detection equipment or other acceptable
243 means to locate underground facilities are used.

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

247 (7) (a) A member operator that states that it does not have
248 accurate information concerning the exact location of its
249 underground facilities is exempt from the requirements of
250 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the
251 best available information to the excavator in order to comply
252 with the requirements of this section. An excavator is not
253 liable for any damage to an underground facility under the
254 exemption in this subsection if the excavation or demolition is
255 performed with reasonable care and detection equipment or other
256 acceptable means to locate underground facilities are used.

257 (9) (a) After receiving notification from the system, a
258 member operator shall provide a positive response to the system
259 within 2 full business days, or 10 such days for an underwater
260 excavation or demolition, indicating the status of operations to
261 protect the facility.

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262 (11) Before or during excavation or demolition, if the
263 marking of the horizontal route of any facility is removed or is
264 no longer visible, or, in the case of an underwater facility, is
265 inadequately documented, the excavator shall stop excavation or
266 demolition activities in the vicinity of the facility and shall
267 notify the system to have the route remarked or adequately
268 documented.

269 Section 5. Paragraph (a) of subsection (2) and subsections
270 (3) and (7) of section 556.106, Florida Statutes, are amended to
271 read:

272 556.106 Liability of the member operator, excavator, and
273 system.—

274 (2) (a) If a person violates s. 556.105(1) or (6), and
275 subsequently, whether by himself or herself or through the
276 person's employees, contractors, subcontractors, or agents,
277 performs an excavation or demolition that damages an underground
278 facility of a member operator, it is rebuttably presumed that
279 the person was negligent. The person, if found liable, is liable
280 for the total sum of the losses to all member operators involved
281 as those costs are normally computed. Any damage for loss of
282 revenue and loss of use may not exceed \$500,000 per affected
283 underground facility, except that revenues lost by a
284 governmental member operator whose revenues are used to support
285 payments on principal and interest on bonds may not be limited.
286 ~~Any liability of the state and its agencies and its subdivisions~~
287 ~~which arises out of this chapter is subject to the provisions of~~
288 ~~s. 768.28.~~

289 (3) If, after receiving proper notice, a member operator
290 fails to discharge a duty imposed by ~~the provisions of this act~~

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

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

309 Section 6. Section 556.107, Florida Statutes, is amended to
310 read:

311 556.107 Violations.—

312 (1) NONCRIMINAL INFRACTIONS.—

313 (a) Violations of the following provisions are noncriminal
314 infractions:

315 1. Section 556.105(1), relating to providing required
316 information.

317 2. Section 556.105(6), relating to the avoidance of
318 excavation.

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

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320 excavation or demolition because marks are no longer visible,
321 or, in the case of underwater facilities, are inadequately
322 documented.

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

326 5. Section 556.105(5) (a) and (b), ~~556.105(5) (b) and (c)~~
327 relating to identification of underground facilities, if a
328 member operator does not mark an underground facility, but not
329 if a member operator marks an underground facility incorrectly.

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

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

335 (b) Any excavator or member operator who commits a
336 noncriminal infraction under paragraph (a) may be issued a
337 citation by any local or state law enforcement officer,
338 government code inspector, or code enforcement officer, and the
339 issuer of a citation may require an excavator to cease work on
340 any excavation or not start a proposed excavation until there
341 has been compliance with the provisions of this chapter.
342 Citations shall be hand delivered to any employee of the
343 excavator or member operator who is involved in the noncriminal
344 infraction. The citation shall be issued in the name of the
345 excavator or member operator, whichever is applicable.

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

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349 ~~any such~~ infraction, which is \$500 ~~\$250~~ plus court costs, ~~except~~
350 ~~as otherwise provided in this section.~~ If a citation is issued
351 by a local law enforcement officer, a local government code
352 inspector, or a code enforcement officer, 80 percent of the
353 civil penalty collected by the clerk of the court shall be
354 distributed to the local governmental entity whose employee
355 issued the citation and 20 percent of the penalty shall be
356 retained by the clerk to cover administrative costs, in addition
357 to other court costs. If a citation is issued by a state law
358 enforcement officer, the civil penalty collected by the clerk
359 shall be retained by the clerk for deposit into the fine and
360 forfeiture fund established pursuant to s. 142.01. Any person
361 who fails to ~~appear or otherwise~~ properly respond to a citation
362 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the
363 citation, be charged with the offense of failing to respond to
364 the ~~such~~ citation and, upon conviction, commits a misdemeanor of
365 the second degree, punishable as provided in s. 775.082 or s.
366 775.083. A written warning to this effect must ~~shall~~ be provided
367 at the time any citation is issued pursuant to paragraph (b).

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

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

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

374
375 ~~The person issuing the citation may indicate on the citation the~~
376 ~~time and location of the scheduled hearing and shall indicate~~
377 ~~the applicable civil penalty.~~

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

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

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

386
387 If the person cited pays the civil penalty ~~follows either of the~~
388 ~~above procedures,~~ she or he is deemed to have admitted to
389 committing the infraction and to have waived the right to a
390 hearing on the issue of commission of the infraction. The
391 admission may be used as evidence in any other proceeding under
392 this chapter.

393 (f) Any person may elect ~~electing~~ to appear before the
394 county court and if so electing ~~or who is required to appear~~
395 ~~shall be~~ deemed to have waived the limitations on the civil
396 penalty specified in paragraph (c). The court, after a hearing,
397 shall make a determination as to whether an infraction has been
398 committed. If the commission of an infraction has been proven,
399 the court may impose a civil penalty not to exceed \$5,000 plus
400 court costs. In determining the amount of the civil penalty, the
401 court may consider previous noncriminal infractions committed.

402 (g) At a court hearing or a hearing before the Division of
403 Administrative Hearings under this chapter, the commission of a
404 charged infraction must be proven by a preponderance of the
405 evidence.

406 (h) If a person is found by a judge ~~the~~ hearing official

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407 to have committed an infraction, the person may appeal that
408 finding to the circuit court.

409 (i) Sunshine State One-Call of Florida, Inc., may, at its
410 own cost, retain an attorney to assist in the presentation of
411 relevant facts and law in the county court or administrative
412 proceeding pertaining to the citation issued under this section
413 or to any alleged violation that may have contributed to an
414 alleged incident. The corporation may also appear in any case
415 appealed to the circuit court if a county court judge or
416 administrative hearing officer finds that an infraction of the
417 chapter was committed. An appellant in the circuit court
418 proceeding shall timely notify the corporation of any appeal
419 under this section.

420 (j)1. Violation of any of the infractions listed in
421 paragraph (a) which may constitute an incident must be reported
422 to the system by an excavator or a member operator within 24
423 hours after learning that the threshold for an incident has been
424 met.

425 2. Upon receipt of information that an incident has
426 occurred, the system shall contract with the Division of
427 Administrative Hearings to conduct a hearing to determine
428 whether there have been any violations of paragraph (a) which
429 were a proximate cause of the incident.

430 3. The division has jurisdiction in a proceeding under this
431 paragraph to determine the facts and law surrounding any
432 incident and to impose a fine against any violator in an amount
433 that may not exceed \$50,000 for any violation of paragraph (a)
434 which was a proximate cause of the incident.

435 4. Any fine imposed by the division must be in addition to

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436 any amount payable as a result of a citation relating to the
 437 incident.

438 5. A fine against an excavator or a member operator levied
 439 under this paragraph must be paid to the system, which shall use
 440 the proceeds of the fines exclusively for damage-prevention
 441 education.

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

450 (3) ~~(2)~~ MISDEMEANORS.—Any person who knowingly and willfully
 451 removes or otherwise destroys the valid stakes or other valid
 452 physical markings described in s. 556.105(5) (a) and (b) ~~s.~~
 453 ~~556.105(5) (b) and (c)~~ used to mark the horizontal route of an
 454 underground facility commits a misdemeanor of the second degree,
 455 punishable as provided in s. 775.082 or s. 775.083. For purposes
 456 of this subsection, stakes or other nonpermanent physical
 457 markings are considered valid for 30 calendar days after
 458 information is provided to the system under s. 556.105(1) (a) ~~s.~~
 459 ~~556.105(1) (c).~~

460 Section 7. Section 556.109, Florida Statutes, is amended to
 461 read:

462 556.109 Emergency excavations or demolitions attempted;
 463 exception.—

464 (1) ~~The provisions of This act~~ does ~~de~~ not apply to making

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465 an excavation or demolition during an emergency ~~if, provided~~ the
466 system or the member operator was notified at the earliest
467 opportunity and all reasonable precautions had been taken to
468 protect any underground facility. For the purposes of this act,
469 "emergency" means any condition constituting a clear and present
470 danger to life or property; a situation caused by the escape of
471 any substance transported by means of an underground facility;
472 any interruption of vital public service or communication caused
473 by any break or defect in a member operator's underground
474 facility; or, in the case of the State Highway System or streets
475 or roads maintained by a political subdivision or underground
476 facilities owned, operated, or maintained by a political
477 subdivision, if the use of such highways, streets, roads, or
478 underground facilities is, in the sole judgment of the
479 Department of Highway Safety and Motor Vehicles, the Department
480 of Transportation, or such political subdivision, impaired by an
481 unforeseen occurrence that ~~which~~ necessitates repair beginning
482 immediately after such occurrence.

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

487 Section 8. Section 556.110, Florida Statutes, is amended to
488 read:

489 556.110 Costs assessed among member operators.—Member
490 operators shall proportionately share in the cost of operating
491 the system through monthly assessments made upon each member
492 operator. ~~However, any member that receives fewer than 10~~
493 ~~notifications in any month shall not be assessed for such month.~~

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494 Section 9. Section 556.114, Florida Statutes, is created to
495 read:

496 556.114 Low-impact marking practices.-

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

501 (2) When an excavator has not completed an excavation
502 noticed under s. 556.105(1) (a) within the period that the
503 information in the notice is considered valid under s.
504 556.105(1) (c), the excavator must provide a subsequent notice to
505 the system under s. 556.105(1) (a) to continue with the
506 excavation, and such subsequent notice shall identify only the
507 remaining area to be excavated.

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

518 (4) Member operators shall mark the area described or
519 premarked by the excavator using temporary, nonpermanent paint,
520 flags, stakes, and other acceptable means.

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

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523 (6) Sunshine State One-Call of Florida, Inc., shall
524 establish an educational program for the purpose of informing
525 excavators and member operators about low-impact marking
526 practices.

527 Section 10. Section 556.115, Florida Statutes, is created
528 to read:

529 556.115 Alternative dispute resolution.-

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

540 (2) The alternative dispute resolution program created by
541 Sunshine State One-Call of Florida, Inc., shall include
542 mediation, arbitration, or other appropriate processes,
543 including the use of the services of the Division of
544 Administrative Hearings.

545 (3) The costs of using the program shall be borne by the
546 voluntary users, and the voluntary users shall choose the form
547 of alternative dispute resolution to be used. If arbitration is
548 used, the users shall decide whether the arbitration will be
549 binding.

550 (4) Unless binding arbitration is the chosen method of
551 alternative dispute resolution, the users or any one of such

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552 users may end the process at any time and exercise the right to
553 proceed in a court of competent jurisdiction or before the
554 Division of Administrative Hearings.

555 (5) This section does not change the basis for civil
556 liability for damages.

557 Section 11. This act shall take effect July 1, 2010.