

By the Committees on Judiciary; and Communications, Energy, and Public Utilities; and 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           prohibiting municipalities, counties, districts, and  
5           other local governments from enacting ordinances or  
6           rules that conflict with ch. 556, F.S.; amending s.  
7           556.103, F.S.; requiring that the board of directors  
8           of Sunshine State One-Call of Florida, Inc., present  
9           to the Governor and Legislature an annual report that  
10          includes a summary of reports issued by the clerks of  
11          court; amending s. 556.105, F.S.; requiring that an  
12          excavator provide the Sunshine State One-Call of  
13          Florida, Inc., system with certain specified  
14          information not less than 10 full business days before  
15          beginning an excavation or demolition beneath the  
16          waters of the state; prohibiting the use of such  
17          information by member operators for sales or marketing  
18          purposes; deleting obsolete provisions; removing  
19          provisions requiring the premarking of certain  
20          proposed excavation sites; requiring a mutually agreed  
21          excavation plan for high-priority excavations;  
22          amending s. 556.106, F.S.; removing redundant  
23          provisions that provide a limited waiver of sovereign  
24          immunity for the state and its agencies and  
25          subdivisions arising from matters involving  
26          underground facilities; amending s. 556.107, F.S.;  
27          providing increased penalties for noncriminal  
28          infractions of the Sunshine State One-Call of Florida,  
29          Inc., system; requiring each clerk of court to submit

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

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59 the Division of Administrative Hearings; creating s.  
60 556.116, F.S.; defining the terms "high-priority  
61 subsurface installations" and "incident"; providing  
62 that if an excavation is proposed within 15 feet of a  
63 high-priority subsurface installation and is  
64 identified as such by the facility operator, the  
65 facility operator must notify the excavator of the  
66 existence of the high-priority subsurface installation  
67 and mark its location before excavation may begin;  
68 requiring an excavator to notify the operator of the  
69 excavation start time in the vicinity of a high-  
70 priority subsurface installation; providing that an  
71 alleged infraction that results in an incident must be  
72 reported to the system by an operator or an excavator;  
73 providing that the system shall transmit incident  
74 reports to the Division of Administrative Hearings;  
75 providing that the system and the division may  
76 contract for the division to conduct proceedings;  
77 providing that the division has jurisdiction to  
78 determine the facts and law concerning an alleged  
79 incident; authorizing the division to impose a fine on  
80 a violator if the violation was a proximate cause of  
81 the incident; providing procedures, venue, and  
82 standard of proof; providing an effective date.

83  
84 Be It Enacted by the Legislature of the State of Florida:

85  
86 Section 1. Paragraph (d) of subsection (3) of section  
87 556.101, Florida Statutes, is amended to read:

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88 556.101 Short title; legislative intent.—

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

90 (d) Reserve to the state the power to regulate any subject  
91 matter specifically addressed in this chapter. Municipalities,  
92 counties, districts, or other local governments may not adopt or  
93 enforce ordinances or rules that conflict with this chapter or  
94 that prescribe any of the following:

95 1. Require operators of underground facilities to obtain  
96 permits from local governments in order to identify underground  
97 facilities.

98 2. Require premarking or marking.

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

101 4. Require removal of marks.

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

104 556.103 Creation of the corporation; establishment of the  
105 board of directors; authority of the board; annual report.—

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

111 (5) ~~Beginning in 1998,~~ The board of directors shall submit  
112 to the President of the Senate, the Speaker of the House of  
113 Representatives, and the Governor, not later than 60 days before  
114 the convening of each regular session of the Legislature, an  
115 annual progress report on the participation by municipalities  
116 and counties in the one-call notification system created by this

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117 chapter. The report must include a summary of the reports to the  
118 system from the clerks of court.

119 Section 3. Paragraphs (a) and (d) of subsection (1),  
120 subsections (5) and (6), paragraph (a) of subsection (7),  
121 paragraph (a) of subsection (9), and subsection (11) of section  
122 556.105, Florida Statutes, are amended to read:

123 556.105 Procedures.—

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

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

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

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

141 4. The commencement date and anticipated duration of the  
142 excavation or demolition.

143 5. Whether machinery will be used for the excavation or  
144 demolition.

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

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146 7. The type of work to be done.

147 8. The approximate depth of the excavation.

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

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

156 ~~a. In areas within which no underground facilities are~~  
157 ~~located.~~

158 ~~b. Where permanent markings, permit and mapping systems,~~  
159 ~~and structural protection for underwater crossings are required~~  
160 ~~or in place.~~

161 ~~c. For previously marked utilities on construction of one-~~  
162 ~~or two family dwellings where the contractor remains in custody~~  
163 ~~and control of the building site for the duration of the~~  
164 ~~building permit.~~

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

168 (5) All member operators within the defined area of a  
169 proposed excavation or demolition shall be promptly notified  
170 through the system, except that member operators with state-  
171 owned underground facilities located within the right-of-way of  
172 a state highway need not be notified of excavation or demolition  
173 activities and are under no obligation to mark or locate the  
174 facilities.

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

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

200 (b) ~~(e)~~ If a member operator determines that a proposed  
201 excavation is in proximity to or in conflict with an underground  
202 facility of the member operator beneath the waters of the state,  
203 the member operator shall identify the estimated horizontal

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204 route of the underground facility, within 10 business days,  
205 using marking buoys or other suitable devices, unless directed  
206 otherwise by an agency having jurisdiction over the waters of  
207 the state under which the member operator's underground facility  
208 is located.

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

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

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

232 (7) (a) A member operator that states that it does not have



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233 accurate information concerning the exact location of its  
234 underground facilities is exempt from the requirements of  
235 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the  
236 best available information to the excavator in order to comply  
237 with the requirements of this section. An excavator is not  
238 liable for any damage to an underground facility under the  
239 exemption in this subsection if the excavation or demolition is  
240 performed with reasonable care and detection equipment or other  
241 acceptable means to locate underground facilities are used.

242 (9) (a) After receiving notification from the system, a  
243 member operator shall provide a positive response to the system  
244 within 2 full business days, or 10 such days for an underwater  
245 excavation or demolition, indicating the status of operations to  
246 protect the facility.

247 (11) Before or during excavation or demolition, if the  
248 marking of the horizontal route of any facility is removed or is  
249 no longer visible, or, in the case of an underwater facility, is  
250 inadequately documented, the excavator shall stop excavation or  
251 demolition activities in the vicinity of the facility and shall  
252 notify the system to have the route remarked or adequately  
253 documented by a member operator or in a manner approved by the  
254 member operator.

255 Section 4. Section 556.106, Florida Statutes, is amended to  
256 read:

257 556.106 Liability of the member operator, excavator, and  
258 system.—

259 (1) There is no liability on the part of, and no cause of  
260 action of any nature shall arise against, the board members of  
261 the corporation in their capacity as administrators of the

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262 system.

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

278 (b) If any excavator fails to discharge a duty imposed by  
279 ~~the provisions of~~ this chapter, the excavator, if found liable,  
280 is liable for the total sum of the losses to all parties  
281 involved as those costs are normally computed. Any damage for  
282 loss of revenue and loss of use may not exceed \$500,000 per  
283 affected 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 ~~(c) Any liability of the state, its agencies, or its~~  
287 ~~subdivisions which arises out of this chapter is subject to the~~  
288 ~~provisions of s. 768.28.~~

289 (c) ~~(d)~~ Obtaining information as to the location of an  
290 underground facility from the member operator as required by

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291 this chapter does not excuse any excavator from performing an  
292 excavation or demolition in a careful and prudent manner, based  
293 on accepted engineering and construction practices, and it does  
294 not excuse the excavator from liability for any damage or injury  
295 resulting from any excavation or demolition.

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

312 (4) If an owner of an underground facility fails to become  
313 a member of the corporation in order to use and participate in  
314 the system, as required by this act, and that failure is a cause  
315 of damage to that underground facility caused by an excavator  
316 who has complied with ~~the provisions of~~ this act and has  
317 exercised reasonable care in the performance of the excavation  
318 that has caused damage to the underground facility, the owner  
319 has no right of recovery against the excavator for the damage to

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320 that underground facility.

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

330 (6) The system does not have a duty to mark or locate  
331 underground facilities and may not do so, and a right of  
332 recovery does not exist against the system for failing to mark  
333 or locate underground facilities. The system is not liable for  
334 the failure of a member operator to comply with the requirements  
335 of this chapter.

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

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

343 Section 5. Section 556.107, Florida Statutes, is amended to  
344 read:

345 556.107 Violations.—

346 (1) NONCRIMINAL INFRACTIONS.—

347 (a) Violations of the following provisions are noncriminal  
348 infractions:

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349 1. Section 556.105(1), relating to providing required  
350 information.

351 2. Section 556.105(6), relating to the avoidance of  
352 excavation.

353 3. Section 556.105(11), relating to the need to stop  
354 excavation or demolition because marks are no longer visible,  
355 or, in the case of underwater facilities, are inadequately  
356 documented.

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

360 5. Section 556.105(5) (a) and (b), ~~556.105(5) (b) and (c)~~  
361 relating to identification of underground facilities, if a  
362 member operator does not mark an underground facility, but not  
363 if a member operator marks an underground facility incorrectly.

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

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

369 (b) Any excavator or member operator who commits a  
370 noncriminal infraction under paragraph (a) may be issued a  
371 citation by any local or state law enforcement officer,  
372 government code inspector, or code enforcement officer, and the  
373 issuer of a citation may require an excavator to cease work on  
374 any excavation or not start a proposed excavation until there  
375 has been compliance with the provisions of this chapter.  
376 Citations shall be hand delivered to any employee of the  
377 excavator or member operator who is involved in the noncriminal

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378 infraction. The citation shall be issued in the name of the  
379 excavator or member operator, whichever is applicable.

380 (c) Any excavator or member operator who commits a  
381 noncriminal infraction under paragraph (a) may be required to  
382 pay a ~~appear before the county court.~~ The civil penalty for each  
383 ~~any such~~ infraction, which is \$500 ~~\$250~~ plus court costs, ~~except~~  
384 ~~as otherwise provided in this section.~~ If a citation is issued  
385 by a local law enforcement officer, a local government code  
386 inspector, or a code enforcement officer, 80 percent of the  
387 civil penalty collected by the clerk of the court shall be  
388 distributed to the local governmental entity whose employee  
389 issued the citation and 20 percent of the penalty shall be  
390 retained by the clerk to cover administrative costs, in addition  
391 to other court costs. If a citation is issued by a state law  
392 enforcement officer, the civil penalty collected by the clerk  
393 shall be retained by the clerk for deposit into the fine and  
394 forfeiture fund established pursuant to s. 142.01. Any person  
395 who fails to ~~appear or otherwise~~ properly respond to a citation  
396 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the  
397 citation, be charged with the offense of failing to respond to  
398 the ~~such~~ citation and, upon conviction, commits a misdemeanor of  
399 the second degree, punishable as provided in s. 775.082 or s.  
400 775.083. A written warning to this effect must ~~shall~~ be provided  
401 at the time any citation is issued pursuant to paragraph (b).

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

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

406 2. ~~Sign and accept a citation indicating a promise to~~

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407 ~~appear before the county court.~~

408

409 ~~The person issuing the citation may indicate on the citation the~~  
410 ~~time and location of the scheduled hearing and shall indicate~~  
411 ~~the applicable civil penalty.~~

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

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

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

420

421 If the person cited pays the civil penalty ~~follows either of the~~  
422 ~~above procedures,~~ she or he is deemed to have admitted to  
423 committing the infraction and to have waived the right to a  
424 hearing on the issue of commission of the infraction. The  
425 admission may be used as evidence in any other proceeding under  
426 this chapter.

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

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436 (g) At a court hearing under this chapter, the commission  
437 of a charged infraction must be proven by a preponderance of the  
438 evidence.

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

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

450 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
451 clerk of court shall submit a report to Sunshine State One-Call  
452 of Florida, Inc., listing each violation notice written under  
453 paragraph (1)(a) which has been filed in that county during the  
454 preceding calendar year. The report must state the name and  
455 address of the member or excavator who committed each infraction  
456 and indicate whether or not the civil penalty for the infraction  
457 was paid.

458 (3) ~~(2)~~ MISDEMEANORS.—Any person who knowingly and willfully  
459 removes or otherwise destroys the valid stakes or other valid  
460 physical markings described in s. 556.105(5)(a) and (b) ~~s.~~  
461 ~~556.105(5)(b) and (c)~~ used to mark the horizontal route of an  
462 underground facility commits a misdemeanor of the second degree,  
463 punishable as provided in s. 775.082 or s. 775.083. For purposes  
464 of this subsection, stakes or other nonpermanent physical



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465 markings are considered valid for 30 calendar days after  
466 information is provided to the system under s. 556.105(1)(a) ~~s.~~  
467 ~~556.105(1)(c)~~.

468 Section 6. Section 556.109, Florida Statutes, is amended to  
469 read:

470 556.109 Emergency excavations or demolitions attempted;  
471 exception.—

472 (1) ~~The provisions of~~ This act does ~~de~~ not apply to making  
473 an excavation or demolition during an emergency if, ~~provided~~ the  
474 system or the member operator was notified at the earliest  
475 opportunity and all reasonable precautions had been taken to  
476 protect any underground facility. For the purposes of this act,  
477 "emergency" means any condition constituting a clear and present  
478 danger to life or property; a situation caused by the escape of  
479 any substance transported by means of an underground facility;  
480 any interruption of vital public service or communication caused  
481 by any break or defect in a member operator's underground  
482 facility; or, in the case of the State Highway System or streets  
483 or roads maintained by a political subdivision or underground  
484 facilities owned, operated, or maintained by a political  
485 subdivision, if the use of such highways, streets, roads, or  
486 underground facilities is, in the sole judgment of the  
487 Department of Highway Safety and Motor Vehicles, the Department  
488 of Transportation, or such political subdivision, impaired by an  
489 unforeseen occurrence that ~~which~~ necessitates repair beginning  
490 immediately after such occurrence.

491 (2) An excavator shall not notify the system that there is  
492 an emergency unless the excavator reasonably believes that the  
493 intended excavation or demolition is due to a situation or

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494 condition as defined in subsection (1).

495 Section 7. Section 556.110, Florida Statutes, is amended to  
496 read:

497 556.110 Costs assessed among member operators.—Member  
498 operators shall proportionately share in the cost of operating  
499 the system through monthly assessments made upon each member  
500 operator. ~~However, any member that receives fewer than 10~~  
501 ~~notifications in any month shall not be assessed for such month.~~

502 Section 8. Section 556.114, Florida Statutes, is created to  
503 read:

504 556.114 Low-impact marking practices.—

505 (1) An excavator providing notice under s. 556.105(1)(a)  
506 shall identify in its notice only the area that will be  
507 excavated during the period that the information in such notice  
508 is considered valid under s. 556.105(1)(c).

509 (2) When an excavator has not completed an excavation  
510 noticed under s. 556.105(1)(a) within the period that the  
511 information in the notice is considered valid under s.  
512 556.105(1)(c), the excavator must provide a subsequent notice to  
513 the system under s. 556.105(1)(a) to continue with the  
514 excavation, and such subsequent notice shall identify only the  
515 remaining area to be excavated.

516 (3) When an excavation site cannot be described in  
517 information provided under s. 556.105(1)(a) with sufficient  
518 particularity to enable the member operator to ascertain the  
519 excavation site, and if the excavator and member operator have  
520 not mutually agreed otherwise, the excavator shall premark the  
521 proposed area of the excavation before a member operator is  
522 required to identify the horizontal route of its underground

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523 facilities in the proximity of any excavation. However,  
524 premarking is not required when the premarking could reasonably  
525 interfere with traffic or pedestrian control.

526 (4) A member operator shall identify the horizontal route  
527 of its underground facilities as set forth in s. 556.105(5) (a)  
528 and (b), and excavators shall premark an excavation site as set  
529 forth in subsection (3) using flags or stakes or temporary, non-  
530 permanent paint or other industryaccepted low-impact marking  
531 practices.

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

534 (6) Sunshine State One-Call of Florida, Inc., shall  
535 establish an educational program for the purpose of informing  
536 excavators and member operators about low-impact marking  
537 practices.

538 Section 9. Section 556.115, Florida Statutes, is created to  
539 read:

540 556.115 Alternative dispute resolution.—

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

551 (2) The alternative dispute resolution program created by

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552 Sunshine State One-Call of Florida, Inc., shall include  
553 mediation, arbitration, or other appropriate processes,  
554 including the use of the services of the Division of  
555 Administrative Hearings.

556 (3) The costs of using the program shall be borne by the  
557 voluntary users, and the voluntary users shall choose the form  
558 of alternative dispute resolution to be used. If arbitration is  
559 used, the users shall decide whether the arbitration will be  
560 binding.

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

566 (5) This section does not change the basis for civil  
567 liability for damages.

568 Section 10. Section 556.116, Florida Statutes, is created  
569 to read:

570 556.116 High-priority subsurface installations; special  
571 procedures.-

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

573 (a) "Division" means the Division of Administrative  
574 Hearings.

575 (b) "High-priority subsurface installation" means an  
576 underground gas transmission or gas distribution pipeline, an  
577 underground pipeline used to transport gasoline, jet fuel, or  
578 any other refined petroleum product or hazardous or highly  
579 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
580 the pipeline is deemed to be critical by the operator of the

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581 pipeline and is identified as a high-priority subsurface  
582 installation to an excavator who has provided a notice of intent  
583 to excavate pursuant to s. 556.105(1), or would have been  
584 identified as a high-priority subsurface installation except for  
585 the excavator's failure to give proper notice of intent to  
586 excavate.

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

591 1. Results in death or serious bodily injury requiring  
592 inpatient hospitalization.

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

596 (2) When an operator proposes to excavate or demolish  
597 within 15 feet of the horizontal route of an underground  
598 facility that has been identified as a high-priority subsurface  
599 installation by the operator of the facility, the operator  
600 shall, in addition to identifying the horizontal route of its  
601 facility as set forth in s. 556.105(5) (a) and (b), and within  
602 the time period set forth in s. 556.105(9) (a) for a positive  
603 response, notify the excavator that the facility is a high-  
604 priority subsurface installation. If the member operator  
605 provides such timely notice of the existence of a high-priority  
606 subsurface installation, an excavator shall notify the operator  
607 of the planned excavation start date and time before beginning  
608 excavation. If the member operator does not provide timely  
609 notice, the excavator may proceed, after waiting the prescribed

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610 time period set forth in s. 556.105(9)(a), to excavate without  
611 notifying the member operator of the excavation start date and  
612 time. The exemptions stated in s. 556.108 apply to the  
613 notification requirements in this subsection.

614 (3)(a) An alleged commission of an infraction listed in s.  
615 556.107(1) which results in an incident must be reported to the  
616 system by a member operator or an excavator within 24 hours  
617 after learning of the alleged occurrence of an incident.

618 (b) Upon receipt of an allegation that an incident has  
619 occurred, the system shall transmit an incident report to the  
620 division and contract with the division so that the division may  
621 conduct a hearing to determine whether an incident has occurred,  
622 and, if so, whether a violation of s. 556.107(1)(a), was a  
623 proximate cause of the incident. The contract for services to be  
624 performed by the division must include provisions for the system  
625 to reimburse the division for any costs incurred by the division  
626 for court reporters, transcript preparation, travel, facility  
627 rental, and other customary hearing costs, in the manner set  
628 forth in s. 120.65(11).

629 (c) The division has jurisdiction in a proceeding under  
630 this section to determine the facts and law concerning an  
631 alleged incident. The division may impose a fine against a  
632 violation in an amount not to exceed \$50,000 if the person  
633 violated a provision of s. 556.107(1)(a), and that violation was  
634 a proximate cause of the incident. However, if a state agency or  
635 political subdivision caused the incident, the state agency or  
636 political subdivision may not be fined in an amount in excess of  
637 \$10,000.

638 (d) A fine imposed by the division is in addition to any

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639 amount payable as a result of a citation relating to the  
640 incident under s. 556.107(1)(a).

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

647 (f) This section does not change the basis for civil  
648 liability. The findings and results of a hearing under this  
649 section may not be used as evidence of liability in any civil  
650 action.

651 (4)(a) The division shall issue and serve on all original  
652 parties an initial order that assigns the case to a specific  
653 administrative law judge and requests information regarding  
654 scheduling the final hearing within 5 business days after the  
655 division receives a petition or request for hearing. The  
656 original parties in the proceeding includes all excavators and  
657 member operators identified by the system as being involved in  
658 the alleged incident. The final hearing must be conducted within  
659 60 days after the date the petition or the request for a hearing  
660 is filed with the division.

661 (b) Unless the parties otherwise agree, venue for the  
662 hearing shall be in the county in which the underground facility  
663 is located.

664 (c) An intervenor in the proceeding must file a petition to  
665 intervene no later than 15 days before the final hearing. A  
666 person who has a substantial interest in the proceeding may  
667 intervene.

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- 668       (5) The following procedures apply:
- 669       (a) Motions shall be limited to the following:
- 670           1. A motion in opposition to the petition.
- 671           2. A motion requesting discovery beyond the informal
- 672 exchange of documents and witness lists described in paragraph
- 673 (c). Upon a showing of necessity, additional discovery may be
- 674 permitted in the discretion of the administrative law judge, but
- 675 only if the discovery can be completed no later than 5 days
- 676 before the final hearing.
- 677           3. A motion for continuance of the final hearing date.
- 678       (b) All parties shall attend a prehearing conference for
- 679 the purpose of identifying the legal and factual issues to be
- 680 considered at the final hearing, the names and addresses of
- 681 witnesses who may be called to testify at the final hearing,
- 682 documentary evidence that will be offered at the final hearing,
- 683 the range of penalties that may be imposed, and any other matter
- 684 that would expedite resolution of the proceeding. The prehearing
- 685 conference may be held by telephone conference call.
- 686       (c) Not later than 5 days before the final hearing the
- 687 parties shall furnish to each other copies of documentary
- 688 evidence and lists of witnesses who may testify at the final
- 689 hearing.
- 690       (d) All parties shall have an opportunity to respond, to
- 691 present evidence and argument on all issues involved, to conduct
- 692 cross-examination and submit rebuttal evidence, and to be
- 693 represented by counsel or other qualified representative.
- 694       (e) The record shall consist only of:
- 695           1. All notices, pleadings, motions, and intermediate
- 696 rulings.



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- 697       2. Evidence received during the final hearing.
- 698       3. A statement of matters officially recognized.
- 699       4. Proffers of proof and objections and rulings thereon.
- 700       5. Matters placed on the record after an ex parte  
701 communication.
- 702       6. The written final order of the administrative law judge  
703 presiding at the final hearing.
- 704       7. The official transcript of the final hearing.
- 705       (f) The division shall accurately and completely preserve  
706 all testimony in the proceeding and, upon request by any party,  
707 shall make a full or partial transcript available at no more  
708 than actual cost.
- 709       (g) The administrative law judge shall issue a final order  
710 within 30 days after the final hearing or the filing of the  
711 transcript thereof, whichever is later. The final order of the  
712 administrative law judge must include:
- 713           1. Findings of fact based exclusively on the evidence of  
714 record and matters officially recognized.
- 715           2. Conclusions of law. In determining whether a party has  
716 committed an infraction of s. 556.107(1)(a), and whether the  
717 infraction was a proximate cause of an incident, the commission  
718 of an infraction must be proven by a preponderance of the  
719 evidence.
- 720           3. Imposition of a fine, if applicable.
- 721           4. Any other information required by law or rule to be  
722 contained in a final order.
- 723
- 724       The final order of the administrative law judge constitutes  
725 final agency action subject to judicial review pursuant to s.

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726 120.68.

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