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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 ~~do~~ 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 excavator 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.