

1 A bill to be entitled

2 An act relating to underground facility damage
3 prevention and safety; amending s. 556.102, F.S.;
4 revising the definition of the term "premark" as it
5 relates to the Underground Facility Damage Prevention
6 and Safety Act; amending s. 556.105, F.S.; requiring
7 all member operators including those with state-owned
8 underground facilities located within the right-of-way
9 of a state highway to be notified through the free-
10 access notification system of a proposed excavation or
11 demolition; amending s. 556.106, F.S.; conforming a
12 cross-reference; amending s. 556.107, F.S.; creating
13 an additional noncriminal infraction for the failure
14 of an excavator to notify the member operator in
15 certain circumstances; amending s. 556.108, F.S.;
16 eliminating an exemption; requiring an excavator to
17 provide notice through the free-access notification
18 system before beginning certain excavations,
19 demolitions, or maintenance activities; amending s.
20 556.114, F.S.; clarifying provisions relating to
21 member operators and excavators; amending s. 556.116,
22 F.S.; revising the definition of the term "high-
23 priority subsurface installation" to include all
24 underground pipelines or facilities; authorizing a
25 member operator to deem a pipeline or facility a high-
26 priority subsurface installation; providing that a

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27 decision not to deem a pipeline or facility a high-
28 priority subsurface installation does not constitute a
29 basis for recovery; requiring an excavator to provide
30 the operator with current and accurate contact
31 information when notifying the operator of a planned
32 excavation; requiring that an alleged commission of an
33 infraction reasonably believed to be the proximate
34 cause of an incident to be reported to the free-access
35 notification system within a certain timeframe;
36 authorizing the Division of Administrative Hearings to
37 approve a settlement within certain parameters in lieu
38 of conducting a full hearing; providing that the venue
39 for the hearing is the county in which the incident
40 occurred rather than the county in which the
41 underground facility is located; amending s. 337.401,
42 F.S.; making technical changes and conforming cross-
43 references; providing an effective date.

44

45 Be It Enacted by the Legislature of the State of Florida:

46

47 Section 1. Subsection (11) of section 556.102, Florida
48 Statutes, is amended to read:

49 556.102 Definitions.—As used in this act:

50 (11) "Premark" means to delineate the general scope of the
51 excavation on the surface of the ground using white paint, white
52 stakes, or other similar white markings, electronic markings, or

53 other industry-accepted methods.

54 Section 2. Subsection (5) of section 556.105, Florida
55 Statutes, is amended to read:

56 556.105 Procedures.—

57 (5) All member operators within the defined area of a
58 proposed excavation or demolition shall be promptly notified
59 through the system pursuant to this section, ~~except that member~~
60 ~~operators with state-owned underground facilities located within~~
61 ~~the right-of-way of a state highway need not be notified of~~
62 ~~excavation or demolition activities and are under no obligation~~
63 ~~to mark or locate the facilities.~~

64 (a) If a member operator determines that a proposed
65 excavation or demolition is ~~in proximity to or~~ in conflict with
66 an underground facility of the member operator, except a
67 facility beneath the waters of the state, which is governed by
68 paragraph (b), the member operator shall identify the horizontal
69 route by marking to within 24 inches from the outer edge of
70 either side of the underground facility by the use of stakes,
71 paint, flags, or other suitable means within 2 full business
72 days after the time the notification is received under
73 subsection (1). If the member operator is unable to identify the
74 horizontal route ~~respond~~ within such time, the member operator
75 shall communicate with the person making the request and
76 negotiate in good faith a new schedule and time to mark the
77 underground facility which ~~that~~ is mutually agreeable to, and
78 which should not unreasonably delay~~r~~ the excavator.

79 (b) If a member operator determines that a proposed
 80 excavation is ~~in proximity to or~~ in conflict with an underground
 81 facility of the member operator beneath the waters of the state,
 82 the member operator shall identify the estimated horizontal
 83 route of the underground facility, within 10 business days,
 84 using marking buoys or other suitable devices, unless directed
 85 otherwise by an agency having jurisdiction over the waters of
 86 the state under which the member operator's underground facility
 87 is located.

88 (c) ~~If when~~ excavation is to take place within a tolerance
 89 zone, an excavator shall use increased caution to protect
 90 underground facilities. The protection requires hand digging,
 91 pot holing, soft digging, vacuum excavation methods, or other
 92 similar procedures to identify underground facilities. Any use
 93 of mechanized equipment within the tolerance zone must be
 94 supervised by the excavator.

95 Section 3. Subsection (7) of section 556.106, Florida
 96 Statutes, is amended to read:

97 556.106 Liability of the member operator, excavator, and
 98 system.—

99 (7) An excavator or a member operator who performs an ~~any~~
 100 excavation with hand tools under s. 556.108(3)(b) or (4) ~~s.~~
 101 ~~556.108(4)(c) or (5)~~ is liable for any damage to any operator's
 102 underground facilities damaged during such excavation.

103 Section 4. Paragraph (a) of subsection (1) of section
 104 556.107, Florida Statutes, is amended to read:

105 556.107 Violations.—
 106 (1) NONCRIMINAL INFRACTIONS.—
 107 (a) Violations of the following provisions are noncriminal
 108 infractions:
 109 1. Section 556.105(1), relating to providing required
 110 information.
 111 2. Section 556.105(6), relating to the avoidance of
 112 excavation.
 113 3. Section 556.105(11), relating to the need to stop
 114 excavation or demolition because marks are no longer visible,
 115 or, in the case of underwater facilities, are inadequately
 116 documented.
 117 4. Section 556.105(12), relating to the need to cease
 118 excavation or demolition activities because of contact or damage
 119 to an underground facility.
 120 5. Section 556.105(5)(a) and (b), relating to
 121 identification of underground facilities, if a member operator
 122 does not mark an underground facility, but not if a member
 123 operator marks an underground facility incorrectly.
 124 6. Section 556.109(2), relating to falsely notifying the
 125 system of an emergency situation or condition.
 126 7. Section 556.114(1)-(4) ~~Section 556.114(1), (2), (3),~~
 127 ~~and (4)~~, relating to a failure to follow low-impact marking
 128 practices, as defined therein.
 129 8. Section 556.116(2)(b), relating to the failure of an
 130 excavator to notify a member operator of the start date and time

131 for a planned excavation that is within the vicinity of a high-
 132 priority subsurface installation, when the excavator has been
 133 timely notified by the member operator, either directly or
 134 through the system, of the existence of a high-priority
 135 subsurface installation.

136 Section 5. Section 556.108, Florida Statutes, is amended
 137 to read:

138 556.108 Exemptions.—The notification requirements provided
 139 in s. 556.105(1) do not apply to:

140 (1) Any excavation or demolition performed by the owner of
 141 a single-family residential property, not including property
 142 that is subdivided or is to be subdivided into more than one
 143 single-family residential property; or for such owner by a
 144 member operator or an agent of a member operator when such
 145 excavation or demolition is made entirely on such land, and only
 146 up to a depth of 10 inches; provided due care is used and there
 147 is no encroachment on any member operator's right-of-way,
 148 easement, or permitted use.

149 (2) Any excavation or demolition associated with normal
 150 agricultural or railroad activities, provided such activities
 151 are not performed on any operator's marked right-of-way,
 152 easement, or permitted use.

153 ~~(3) Any excavation or demolition that occurs as the result~~
 154 ~~of normal industrial activities, provided such activities are~~
 155 ~~confined to the immediate secured property of the facility and~~
 156 ~~the activities are not performed on any operator's marked right-~~

157 ~~of-way, easement, or permitted use. For the purposes of this~~
158 ~~act, the industrial activities are limited to the following list~~
159 ~~of Standard Industrial Classifications: Industry Group Numbers~~
160 ~~141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28,~~
161 ~~and 29, as published by the United States Office of Management~~
162 ~~and Budget in 1987.~~

163 (3)~~(4)~~ Any excavation of 18 inches or less for:

164 (a) Surveying public or private property by surveyors or
165 mappers as defined in chapter 472 and services performed by a
166 pest control licensee under chapter 482, excluding marked
167 rights-of-way, marked easements, or permitted uses where marked,
168 if mechanized equipment is not used in the process of such
169 surveying or pest control services and the surveying or pest
170 control services are performed in accordance with the practice
171 rules established under s. 472.027 or s. 482.051, respectively;
172 or

173 ~~(b) Maintenance activities performed by a state agency and~~
174 ~~its employees when such activities are within the right-of-way~~
175 ~~of a public road; however, if a member operator has permanently~~
176 ~~marked facilities on such right-of-way, mechanized equipment may~~
177 ~~not be used without first providing notification; or~~

178 (b)~~(e)~~ Locating, repairing, connecting, adjusting, or
179 routine maintenance of a private or public underground utility
180 facility by an excavator, if the excavator is performing such
181 work for the current owner or future owner of the underground
182 facility and if mechanized equipment is not used.

183 (4)~~(5)~~(a) Any excavation with hand tools by a member
 184 operator or an agent of a member operator for:

185 1. Locating, repairing, connecting, or protecting, or
 186 routine maintenance of, the member operator's underground
 187 facilities; or

188 2. The extension of a member operator's underground
 189 facilities onto the property of a person to be served by such
 190 facilities.

191 (b) The exemption provided in this subsection is limited
 192 to excavations to a depth of 30 inches if the right-of-way has
 193 permanently marked facilities of a company other than the member
 194 operator or its agents performing the excavation.

195 Section 6. Subsection (4) of section 556.114, Florida
 196 Statutes, is amended to read:

197 556.114 Low-impact marking practices.—

198 (4) A member operator shall identify the horizontal route
 199 of its underground facilities as set forth in s. 556.105(5)(a)
 200 and (b), ~~and excavators shall premark an excavation site as set~~
 201 ~~forth in subsection (3)~~ using flags or stakes or temporary,
 202 nonpermanent paint or other industry-accepted low-impact marking
 203 practices.

204 Section 7. Subsections (1) through (4) of section 556.116,
 205 Florida Statutes, are amended, and subsection (6) is added to
 206 that section, to read:

207 556.116 High-priority subsurface installations; special
 208 procedures.—

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

210 (a) "Division" means the Division of Administrative

211 Hearings.

212 (b) "High-priority subsurface installation" means an

213 underground ~~gas transmission or gas distribution~~ pipeline or

214 facility that, ~~an underground pipeline used to transport~~

215 ~~gasoline, jet fuel, or any other refined petroleum product or~~

216 ~~hazardous or highly volatile liquid, such as anhydrous ammonia~~

217 ~~or carbon dioxide, if the pipeline is deemed to be critical by~~

218 the operator of the pipeline or facility and:

219 1. Is identified as a high-priority subsurface

220 installation to an excavator who has provided a notice of intent

221 to excavate pursuant to s. 556.105(1); ~~7~~ or

222 2. Would have been identified as a high-priority

223 subsurface installation except for the excavator's failure to

224 give proper notice of intent to excavate.

225 (c) "Incident" means an event that involves damage to a

226 high-priority subsurface installation that has been identified

227 as such by the operator according to the notification procedures

228 set forth in subsection (2) and that:

229 1. Results in death or serious bodily injury requiring

230 inpatient hospitalization.

231 2. Results in property damage, including service-

232 restoration costs, in an amount in excess of \$50,000 or

233 interruption of service to 2,500 or more customers or users.

234 (2) A member operator may deem any underground pipeline or

235 facility owned or operated by such member operator to be a high-
236 priority subsurface installation and may identify it as such to
237 an excavator. A decision by a member operator not to identify a
238 pipeline or facility as a high-priority subsurface installation
239 does not constitute a basis for recovery against the member
240 operator.

241 (a) If ~~when~~ an excavator proposes to excavate or demolish
242 within 15 feet of the horizontal route of an underground
243 pipeline or facility that has been identified as a high-priority
244 subsurface installation by the operator of the facility, the
245 operator shall, in addition to identifying the horizontal route
246 of its facility as set forth in s. 556.105(5) (a) and (b), and
247 within the time period set forth in s. 556.105(9) (a) for a
248 positive response, notify the excavator that the facility is a
249 high-priority subsurface installation.

250 (b) If the member operator provides such timely notice of
251 the existence of a high-priority subsurface installation, an
252 excavator ~~must~~ shall notify the member operator of the planned
253 excavation start date and time and provide the operator current
254 and accurate contact information before beginning excavation. If
255 the member operator does not provide timely notice, the
256 excavator may proceed, after waiting the prescribed time period
257 set forth in s. 556.105(6) (a) ~~s. 556.105(9) (a)~~, to excavate
258 without notifying the member operator of the excavation start
259 date and time.

260 (c) The exemptions stated in s. 556.108 apply to the

261 notification requirements in this subsection.

262 (3) ~~(a)~~ An alleged commission of an infraction listed in s.
 263 556.107(1) which is reasonably believed by an operator or an
 264 excavator to be a proximate cause of ~~results in~~ an incident must
 265 be reported to the system by a member operator or an excavator
 266 within 24 hours after learning of the alleged occurrence of an
 267 incident.

268 (a) ~~(b)~~ Upon receipt of an allegation that an incident has
 269 occurred, the system shall transmit an incident report to the
 270 division and contract with the division to ~~so that the division~~
 271 ~~may~~ conduct a hearing to determine whether an incident has
 272 occurred, and, if so, whether a violation of s. 556.107(1) (a)
 273 was a proximate cause of the incident. The contract for services
 274 to be performed by the division must include provisions for the
 275 system to reimburse the division for any costs incurred by the
 276 division for court reporters, transcript preparation, travel,
 277 facility rental, and other customary hearing costs, in the
 278 manner set forth in s. 120.65(9).

279 (b) ~~(c)~~ The division has jurisdiction in a proceeding under
 280 this section to determine the facts and law concerning an
 281 alleged incident. The division may impose a fine against a
 282 violator in an amount not to exceed \$50,000 if the person
 283 violated a provision of s. 556.107(1) (a) and that violation was
 284 a proximate cause of the incident. However, if a state agency or
 285 political subdivision caused the incident, the state agency or
 286 political subdivision may not be fined more than ~~in an amount in~~

287 ~~excess of \$10,000.~~

288 (c)~~(d)~~ A fine imposed by the division is in addition to
 289 any amount payable as a result of a citation relating to the
 290 incident under s. 556.107(1) (a).

291 (d)~~(e)~~ A fine against an excavator or a member operator
 292 imposed under this subsection shall be paid to the system, which
 293 shall use the collected fines to satisfy the costs incurred by
 294 the system for any proceedings under this section. ~~To the extent~~
 295 ~~there are any funds remaining,~~ The system may use any remaining
 296 ~~the~~ funds exclusively for damage-prevention education.

297 (e) At any time after the system has transmitted an
 298 incident report to the division, the person alleged to have
 299 caused the occurrence of an incident may offer to settle the
 300 matter by payment of a fine.

301 (f) The division may approve a settlement in lieu of
 302 conducting a full hearing concerning an alleged incident, if the
 303 settlement is within the parameters established under paragraph
 304 (b).

305 (g) Any fine resulting from a settlement approved under
 306 paragraph (f) shall be used as directed in paragraph (d).

307 ~~(f) This section does not change the basis for civil~~
 308 ~~liability. The findings and results of a hearing under this~~
 309 ~~section may not be used as evidence of liability in any civil~~
 310 ~~action.~~

311 ~~(4)(a)~~ The division shall issue and serve on all original
 312 parties an initial order that assigns the case to a specific

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313 administrative law judge and requests information regarding
314 scheduling the final hearing within 5 business days after the
315 division receives a petition or request for hearing. The
316 original parties in the proceeding include all excavators and
317 member operators identified by the system as being involved in
318 the alleged incident. The final hearing must be conducted within
319 60 days after the date the petition or the request for a hearing
320 is filed with the division.

321 ~~(a)-(b)~~ Unless the parties otherwise agree, venue for the
322 hearing shall be in the county in which the incident occurred
323 ~~the underground facility is located.~~

324 ~~(b)-(e)~~ An intervenor in the proceeding must file a
325 petition to intervene within ~~no later than~~ 15 days before the
326 final hearing. A person who has a substantial interest in the
327 proceeding may intervene.

328 (6) This section does not change the basis for civil
329 liability that may result from damage to a high-priority
330 subsurface installation. The findings and results of a hearing
331 under this section may not be used as evidence of liability in
332 any civil action.

333 Section 8. Paragraph (c) of subsection (3) of section
334 337.401, Florida Statutes, is amended to read:

335 337.401 Use of right-of-way for utilities subject to
336 regulation; permit; fees.—

337 (3)

338 (c)1. It is the intention of the state to treat all

339 providers of communications services that use or occupy
340 municipal or charter county roads or rights-of-way for the
341 provision of communications services in a nondiscriminatory and
342 competitively neutral manner with respect to the payment of
343 permit fees. Certain providers of communications services have
344 been granted by general law the authority to offset permit fees
345 against franchise or other fees while other providers of
346 communications services have not been granted this authority. In
347 order to treat all providers of communications services in a
348 nondiscriminatory and competitively neutral manner with respect
349 to the payment of permit fees, each municipality and charter
350 county shall make an election under ~~either~~ sub-subparagraph a.
351 or sub-subparagraph b. and must inform the Department of Revenue
352 of the election by certified mail by July 16, 2001. Such
353 election shall take effect October 1, 2001.

354 a.(I) The municipality or charter county may require and
355 collect permit fees from any providers of communications
356 services that use or occupy municipal or county roads or rights-
357 of-way. All such fees ~~permitted under this sub-subparagraph~~ must
358 be reasonable and commensurate with the direct and actual cost
359 of the regulatory activity, including issuing and processing
360 permits, plan reviews, physical inspection, and direct
361 administrative costs; must be demonstrable; and must be
362 equitable among users of the roads or rights-of-way. The ~~A~~ fee
363 ~~permitted under this sub-subparagraph~~ may not: be offset against
364 the tax imposed under chapter 202; include the costs of roads or

365 rights-of-way acquisition or roads or rights-of-way rental;
366 include any general administrative, management, or maintenance
367 costs of the roads or rights-of-way; or be based on a percentage
368 of the value or costs associated with the work to be performed
369 on the roads or rights-of-way. In an action to recover amounts
370 due for a fee not permitted under this sub-subparagraph, the
371 prevailing party may recover court costs and attorney ~~attorney's~~
372 fees at trial and on appeal. In addition to the limitations set
373 forth in this section, a fee levied by a municipality or charter
374 county under this sub-subparagraph may not exceed \$100. However,
375 permit fees may not be imposed with respect to permits that may
376 be required for service drop lines not required to be noticed
377 under s. 556.108(4)(a)2. ~~s. 556.108(5)(a)2.~~ or for any activity
378 that does not require the physical disturbance of the roads or
379 rights-of-way or does not impair access to or full use of the
380 roads or rights-of-way.

381 (II) To ensure competitive neutrality among providers of
382 communications services, for any municipality or charter county
383 that elects to exercise its authority to require and collect
384 permit fees under this sub-subparagraph, the rate of the local
385 communications services tax imposed by such jurisdiction, as
386 computed under s. 202.20, shall automatically be reduced by a
387 rate of 0.12 percent.

388 b. Alternatively, the municipality or charter county may
389 elect not to require and collect permit fees from any provider
390 of communications services that uses or occupies municipal or

391 charter county roads or rights-of-way for the provision of
392 communications services; however, each municipality or charter
393 county that elects to operate under this sub-subparagraph
394 retains all authority to establish rules and regulations for
395 providers of communications services to use or occupy roads or
396 rights-of-way as provided in this section. If a municipality or
397 charter county elects to operate under this sub-subparagraph,
398 the total rate for the local communications services tax as
399 computed under s. 202.20 for that municipality or charter county
400 may be increased by ordinance or resolution by an amount not to
401 exceed a rate of 0.12 percent. If a municipality or charter
402 county elects to increase its rate effective October 1, 2001,
403 the municipality or charter county shall inform the department
404 of such increased rate by certified mail postmarked on or before
405 July 16, 2001.

406 c. A municipality or charter county that does not make an
407 election as provided for in this subparagraph shall be presumed
408 to have elected to operate under the provisions of sub-
409 subparagraph b.

410 2. Each noncharter county shall make an election under
411 either sub-subparagraph a. or sub-subparagraph b. and shall
412 inform the Department of Revenue of the election by certified
413 mail by July 16, 2001. Such election shall take effect October
414 1, 2001.

415 a. The noncharter county may elect to require and collect
416 permit fees from any providers of communications services that

417 use or occupy noncharter county roads or rights-of-way. All fees
418 permitted under this sub-subparagraph must be reasonable and
419 commensurate with the direct and actual cost of the regulatory
420 activity, including issuing and processing permits, plan
421 reviews, physical inspection, and direct administrative costs;
422 must be demonstrable; and must be equitable among users of the
423 roads or rights-of-way. A fee permitted under this sub-
424 subparagraph may not: be offset against the tax imposed under
425 chapter 202; include the costs of roads or rights-of-way
426 acquisition or roads or rights-of-way rental; include any
427 general administrative, management, or maintenance costs of the
428 roads or rights-of-way; or be based on a percentage of the value
429 or costs associated with the work to be performed on the roads
430 or rights-of-way. In an action to recover amounts due for a fee
431 not permitted under this sub-subparagraph, the prevailing party
432 may recover court costs and attorney ~~attorney's~~ fees at trial
433 and on appeal. In addition to the limitations set forth in this
434 section, a fee levied by a noncharter county under this sub-
435 subparagraph may not exceed \$100. However, permit fees may not
436 be imposed with respect to permits that may be required for
437 service drop lines not required to be noticed under s.
438 556.108(4)(a)2. ~~s. 556.108(5)(a)2.~~ or for any activity that does
439 not require the physical disturbance of the roads or rights-of-
440 way or does not impair access to or full use of the roads or
441 rights-of-way.

442 b. Alternatively, the noncharter county may elect not to

443 require and collect permit fees from any provider of
444 communications services that uses or occupies noncharter county
445 roads or rights-of-way for the provision of communications
446 services; however, each noncharter county that elects to operate
447 under this sub-subparagraph shall retain all authority to
448 establish rules and regulations for providers of communications
449 services to use or occupy roads or rights-of-way as provided in
450 this section. If a noncharter county elects to operate under
451 this sub-subparagraph, the total rate for the local
452 communications services tax as computed under s. 202.20 for that
453 noncharter county may be increased by ordinance or resolution by
454 an amount not to exceed a rate of 0.24 percent, to replace the
455 revenue the noncharter county would otherwise have received from
456 permit fees for providers of communications services. If a
457 noncharter county elects to increase its rate effective October
458 1, 2001, the noncharter county shall inform the department of
459 such increased rate by certified mail postmarked on or before
460 July 16, 2001.

461 c. A noncharter county that does not make an election as
462 provided for in this subparagraph shall be presumed to have
463 elected to operate under the provisions of sub-subparagraph b.

464 3. Except as provided in this paragraph, municipalities
465 and counties retain all existing authority to require and
466 collect permit fees from users or occupants of municipal or
467 county roads or rights-of-way and to set appropriate permit fee
468 amounts.

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Section 9. This act shall take effect July 1, 2014.