

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 379	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Underground Facilities	114	Y's 1	N's
SPONSOR(S):	Leek and others	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/SB 446			

SUMMARY ANALYSIS

HB 379 passed the House on April 5, 2017, and subsequently passed the Senate on May 1, 2017.

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), to administer a free-access notification system.

The bill amends the "Underground Facility Damage Prevention and Safety Act" by:

- Requiring the SSOCOF board of directors, in its annual progress report on the participation by municipalities and counties in the one-call notification system, to include a summary of the damage reporting data received by the system for the preceding year and any analysis of the data by the board;
- Requiring an excavator that causes contact with or damage to any pipe or other underground facility to immediately report the contact or damage by calling 911 if any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration has escaped;
- Requiring member operators, after being notified by an excavator that causes damage to a pipe, cable, or protective covering, to file a report with the one-call system on an annual basis, with a deadline of March 31 each year for all reports from the prior calendar year, or more frequently at the option and sole discretion of the member operator; requiring such reports to include, if known, the cause, nature, and location of the damage; and
- Providing that if a citation is issued by a state law enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation.

The bill may have an insignificant, positive fiscal impact on state government revenues. The bill does not appear to impact state government expenditures or local government revenues or expenditures.

The bill was approved by the Governor on June 14, 2017, ch. 2017-102, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The goal of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.² To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person’s intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.³ All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.⁴

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.⁵ The system is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁶ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.⁷ The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.⁹

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a

¹ s. 556.102(13), F.S., defines “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities.”

² s. 556.101(3), F.S.

³ s. 556.101(2), F.S.

⁴ s. 556.103(1), F.S.

⁵ s. 556.103, F.S.

⁶ s. 556.104, F.S.

⁷ s. 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

⁸ s. 556.105(1)(c), F.S.

⁹ s. 556.105(3), F.S.

¹⁰ s. 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹¹

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹²

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹³ If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁴ If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk of the court is retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01, F.S.¹⁵ The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

By March 31 of each year, each clerk of court must submit a report to SSOCOF listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year.¹⁶ The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.¹⁷ Additionally, the SSOCOF board must submit an annual progress report, including the summary of the reports to the system from the clerks of court, to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.¹⁸

U.S. DOT Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. Department of Transportation (DOT) has back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.¹⁹

On July 13, 2015, the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²⁰

¹¹ s. 556.105(5), F.S.

¹² s. 556.105(6), F.S.

¹³ s. 556.107(1), F.S.

¹⁴ s. 556.107(1)(c), F.S.

¹⁵ *Id.*

¹⁶ s. 556.107(2), F.S.

¹⁷ *Id.*

¹⁸ s. 556.103(5), F.S.

¹⁹ 49 U.S.C. § 60114.

²⁰ U.S. DEP'T OF TRANS., PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN., *About Excavation Enforcement Final Rule*, <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement> (last visited Feb. 8, 2017).

Under its rule,²¹ PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program²²:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?
- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, do the state's excavation damage prevention requirements include the following:
 - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
 - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
 - An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
 - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
 - PHMSA will make the written justifications available to the public.

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.²³ States that fail to establish an adequate enforcement program within five years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.²⁴

²¹ Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Effect of Proposed Changes

Expansion of Annual Progress Report

The bill expands the SSOCOF board's annual progress report on the participation by municipalities and counties in the one-call notification system to include: (1) a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year; and (2) any analysis of the data by the board.

This expansion of information provided in the annual progress report may provide the data necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Procedures for Contact or Damage

The bill provides that, if contact with or damage to an underground pipe or other underground facility causes the escape of natural gas or any hazardous substance or material regulated by PHMSA, the excavator, in addition to immediately notifying the member operator, must immediately report the contact or damage by calling the 911 emergency telephone number.

This requirement to call 911 may provide the procedures necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

The bill provides that, after being notified by an excavator that has caused contact with or damage to any pipe, cable, or protective covering, or any other underground facility, the member operator must file a report with the SSOCOF system. These reports must be submitted annually to the system, with a deadline of March 31 each year for all reports from the prior calendar year. Member operators also have the option and sole discretion to submit the reports to the system more frequently than the annual deadline. These member operator reports are required, if known, to include the cause, nature, and location of the damage. The bill also provides that the system is required to establish and maintain a process to facilitate the submission of the member operator reports. These requirements may provide the procedures necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Civil Penalty Citations

The bill provides that if a citation is issued by a state law enforcement officer or other local officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, and 20 percent of the penalty will be retained by the clerk of the court to cover administrative costs. Thus, the bill may encourage greater enforcement efforts by state law enforcement entities who currently receive no shares of these penalties.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant, positive impact on state government revenues.

By entitling a state law enforcement entity that issues a citation to receive 80 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by such entities, leading to additional state revenues. The significance of the increase in state revenues would depend entirely on the number of citations issued by state law enforcement officers, and compliance with and enforcement of ch. 556, F.S. In 2015, the Florida Court Clerks &

Comptrollers reported a total of 22 citations were issued under ch. 556, F.S.²⁵ None were issued by state law enforcement officers.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁵ Email and data on file with House Energy & Utilities Subcommittee staff.