

By Senator Broxson

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1                   A bill to be entitled  
2       An act relating to underground facility damage  
3       prevention and safety; amending s. 556.102, F.S.;  
4       defining terms; amending s. 556.105, F.S.; changing  
5       the number of days' notice an excavator must provide  
6       to the free-access notification system before  
7       beginning any excavation or demolition; amending s.  
8       556.107, F.S.; repealing provisions regarding  
9       citations for specified noncriminal infractions;  
10      creating an underground facility damage prevention  
11      review panel; providing the membership of the review  
12      panel; specifying the term limits of the review panel;  
13      requiring Sunshine State One-Call of Florida, Inc., to  
14      provide support to the panel; specifying how the  
15      review panel will be funded; providing dates by which  
16      alleged violations must be reported; providing a  
17      hearing process to allow the review panel to hear  
18      complaints regarding certain alleged violations;  
19      specifying the civil penalties that the review panel  
20      may assess; providing a review process through the  
21      Division of Administrative Hearings for infractions  
22      not resolved by the review panel; specifying a  
23      criminal penalty for any person who removes or damages  
24      permanent underground facility markers under certain  
25      circumstances; amending s. 556.114, F.S.; authorizing  
26      member operators to place permanent markers for  
27      certain purposes; amending s. 556.116, F.S.;  
28      conforming provisions to changes made by the act;  
29      providing an effective date.

1-00896-19

2019848\_\_

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

Section 1. Section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.—As used in this act:

(1) "Board of directors" or "board" means the board of directors of the corporation.

(2)~~(1)~~ "Business days" means Monday through Friday, excluding the following holidays: New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(3)~~(2)~~ "Business hours" means the hours of a day during which the system is open for business.

(4) "Corporation" means Sunshine State One-Call of Florida, Inc.

(5)~~(3)~~ "Damage" means any impact upon or contact with, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance, partial or complete, of any underground facility.

(6)~~(4)~~ "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rended,

1-00896-19

2019848\_\_

59 moved, or removed by means of any tool, equipment, or discharge  
60 of explosives, or any disturbance of the earth in any manner on  
61 public or private lands which could damage any underground  
62 facility.

63 (7)~~(5)~~ "Design services" means services that may be  
64 provided by a member operator to a design engineer, architect,  
65 surveyor, or planner, if the presence of underground facilities  
66 is known to a member operator, upon payment of a fee to the  
67 member operator, which services may be based on:

68 (a) Information obtained solely from a review of utility  
69 records.

70 (b) Information to augment utility records, such as  
71 topographic surveying of above-ground utility features.

72 (c) Information obtained through the use of designating  
73 technologies to obtain horizontal underground facility  
74 locations.

75 (d) Information obtained from physically exposing  
76 underground facilities.

77 (8) "Division" means the Division of Administrative  
78 Hearings.

79 (9)~~(6)~~ "Excavate" or "excavation" means any manmade cut,  
80 cavity, trench, or depression in the earth's surface, formed by  
81 removal of earth, intended to change the grade or level of land,  
82 or intended to penetrate or disturb the surface of the earth,  
83 including land beneath the waters of the state, as defined in s.  
84 373.019(22), and the term includes pipe bursting and directional  
85 drilling or boring from one point to another point beneath the  
86 surface of the earth, or other trenchless technologies.

87 (10)~~(7)~~ "Excavator" or "excavating contractor" means any

1-00896-19

2019848\_\_

88 person performing excavation or demolition operations.

89 (11)~~(8)~~ "Member operator" means any person who furnishes or  
90 transports materials or services by means of an underground  
91 facility.

92 (12) "Permanent marker" means a clearly visible indication  
93 of the approximate location of an underground facility which is  
94 made of material that is durable in nature and which is  
95 reasonably expected to remain in position for the life of the  
96 underground facility.

97 (13)~~(9)~~ "Person" means any individual, firm, joint venture,  
98 partnership, corporation, association, municipality, or other  
99 political subdivision, governmental unit, department, or agency,  
100 and includes any trustee, receiver, assignee, or personal  
101 representative of a person.

102 (14)~~(10)~~ "Positive response" means the communications among  
103 member operators, excavators, and the system concerning the  
104 status of locating an underground facility.

105 (15)~~(11)~~ "Premark" means to delineate the general scope of  
106 the excavation on the surface of the ground using white paint,  
107 white stakes, or other similar white markings.

108 (17)~~(12)~~ "Tolerance zone" means 24 inches from the outer  
109 edge of either side of the exterior surface of a marked  
110 underground facility.

111 (18)~~(13)~~ "Underground facility" means any public or private  
112 personal property which is buried, placed below ground, or  
113 submerged on any member operator's right-of-way, easement, or  
114 permitted use which is being used or will be used in connection  
115 with the storage or conveyance of water; sewage; electronic,  
116 telephonic, or telegraphic communication; electric energy; oil;

1-00896-19

2019848\_\_

117 petroleum products; natural gas; optical signals; or other  
118 substances, and includes, but is not limited to, pipelines,  
119 pipes, sewers, conduits, cables, valves, and lines. For purposes  
120 of this act, a liquefied petroleum gas line regulated under  
121 chapter 527 is not an underground facility unless such line is  
122 subject to the requirements of Title 49 C.F.R. adopted by the  
123 Department of Agriculture and Consumer Services, provided there  
124 is no encroachment on any member operator's right-of-way,  
125 easement, or permitted use. Petroleum storage systems subject to  
126 regulation pursuant to chapter 376 are not considered  
127 underground facilities for the purposes of this act unless the  
128 storage system is located on a member operator's right-of-way or  
129 easement. Storm drainage systems are not considered underground  
130 facilities.

131 (16)~~(14)~~ "System" means a free-access notification system  
132 established by the corporation as provided in this act.

133 Section 2. Paragraph (a) of subsection (1), paragraph (a)  
134 of subsection (5), and paragraph (a) of subsection (9) of  
135 section 556.105, Florida Statutes, are amended to read:

136 556.105 Procedures.—

137 (1) (a) Not less than 3 ~~2~~ full business days before  
138 beginning any excavation or demolition that is not beneath the  
139 waters of the state, and not less than 10 ~~full~~ business days  
140 before beginning any excavation or demolition that is beneath  
141 the waters of the state, an excavator shall provide the  
142 following information through the system:

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

1-00896-19

2019848\_\_

146           2. The name and telephone number of the representative for  
147 the excavator, and a valid electronic address to facilitate a  
148 positive response by the system should be provided, if  
149 available.

150           3. The county, the city or closest city, and the street  
151 address or the closest street, road, or intersection to the  
152 location where the excavation or demolition is to be performed,  
153 and the construction limits of the excavation or demolition.

154           4. The commencement date and anticipated duration of the  
155 excavation or demolition.

156           5. Whether machinery will be used for the excavation or  
157 demolition.

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

159           7. The type of work to be done.

160           8. The approximate depth of the excavation.

161           (5) All member operators within the defined area of a  
162 proposed excavation or demolition shall be promptly notified  
163 through the system, except that member operators with state-  
164 owned underground facilities located within the right-of-way of  
165 a state highway need not be notified of excavation or demolition  
166 activities and are under no obligation to mark or locate the  
167 facilities.

168           (a) If a member operator determines that a proposed  
169 excavation or demolition is in proximity to or in conflict with  
170 an underground facility of the member operator, except a  
171 facility beneath the waters of the state, which is governed by  
172 paragraph (b), the member operator shall identify the horizontal  
173 route by marking to within 24 inches from the outer edge of  
174 either side of the underground facility by the use of stakes,

1-00896-19

2019848\_\_

175 paint, flags, or other suitable means within 3 ~~2-full~~ business  
176 days after the time the notification is received under  
177 subsection (1). If the member operator is unable to respond  
178 within such time, the member operator shall communicate with the  
179 person making the request and negotiate a new schedule and time  
180 that is agreeable to, and should not unreasonably delay, the  
181 excavator.

182 (9) (a) After receiving notification from the system, a  
183 member operator shall provide a positive response to the system  
184 within 3 ~~2-full~~ business days, or 10 such days for an underwater  
185 excavation or demolition, indicating the status of operations to  
186 protect the facility.

187 Section 3. Section 556.107, Florida Statutes, is amended to  
188 read:

189 556.107 Violations.—

190 (1) NONCRIMINAL INFRACTIONS.—

191 ~~(a)~~ Violations of the following provisions are noncriminal  
192 infractions:

193 (a)1. Section 556.105(1), relating to providing required  
194 information.

195 (b)2. Section 556.105(6), relating to the avoidance of  
196 excavation.

197 (c)3. Section 556.105(11), relating to the need to stop  
198 excavation or demolition because marks are no longer visible,  
199 or, in the case of underwater facilities, are inadequately  
200 documented.

201 (d)4. Section 556.105(12), relating to the need to cease  
202 excavation or demolition activities because of contact or damage  
203 to an underground facility.

1-00896-19

2019848\_\_

204       (e)5. Section 556.105(5) (a) and (b), relating to  
205 identification of underground facilities, if a member operator  
206 does not mark an underground facility, but not if a member  
207 operator marks an underground facility incorrectly.

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

210       (g)7. Section 556.114(1), (2), (3), and (4), relating to a  
211 failure to follow low-impact marking practices, as defined  
212 therein.

213       ~~(b) Any excavator or member operator who commits a~~  
214 ~~noncriminal infraction under paragraph (a) may be issued a~~  
215 ~~citation by any local or state law enforcement officer,~~  
216 ~~government code inspector, or code enforcement officer, and the~~  
217 ~~issuer of a citation may require an excavator to cease work on~~  
218 ~~any excavation or not start a proposed excavation until there~~  
219 ~~has been compliance with the provisions of this chapter.~~  
220 ~~Citations shall be hand delivered to any employee of the~~  
221 ~~excavator or member operator who is involved in the noncriminal~~  
222 ~~infraction. The citation shall be issued in the name of the~~  
223 ~~excavator or member operator, whichever is applicable.~~

224       ~~(c) Any excavator or member operator who commits a~~  
225 ~~noncriminal infraction under paragraph (a) may be required to~~  
226 ~~pay a civil penalty for each infraction, which is \$500 plus~~  
227 ~~court costs. If a citation is issued by a state law enforcement~~  
228 ~~officer, a local law enforcement officer, a local government~~  
229 ~~code inspector, or a code enforcement officer, 80 percent of the~~  
230 ~~civil penalty collected by the clerk of the court shall be~~  
231 ~~distributed to the governmental entity whose employee issued the~~  
232 ~~citation and 20 percent of the penalty shall be retained by the~~



1-00896-19

2019848\_\_

233 ~~clerk to cover administrative costs, in addition to other court~~  
234 ~~costs. Any person who fails to properly respond to a citation~~  
235 ~~issued pursuant to paragraph (b) shall, in addition to the~~  
236 ~~citation, be charged with the offense of failing to respond to~~  
237 ~~the citation and, upon conviction, commits a misdemeanor of the~~  
238 ~~second degree, punishable as provided in s. 775.082 or s.~~  
239 ~~775.083. A written warning to this effect must be provided at~~  
240 ~~the time any citation is issued pursuant to paragraph (b).~~

241 ~~(d) Any person cited for an infraction under paragraph (a)~~  
242 ~~may post a bond, which shall be equal in amount to the~~  
243 ~~applicable civil penalty plus court costs.~~

244 ~~(e) A person charged with a noncriminal infraction under~~  
245 ~~paragraph (a) may pay the civil penalty plus court costs, by~~  
246 ~~mail or in person, within 30 days after the date of receiving~~  
247 ~~the citation. If the person cited pays the civil penalty, she or~~  
248 ~~he is deemed to have admitted to committing the infraction and~~  
249 ~~to have waived the right to a hearing on the issue of commission~~  
250 ~~of the infraction. The admission may be used as evidence in any~~  
251 ~~other proceeding under this chapter.~~

252 ~~(f) Any person may elect to appear before the county court~~  
253 ~~and if so electing is deemed to have waived the limitations on~~  
254 ~~the civil penalty specified in paragraph (c). The court, after a~~  
255 ~~hearing, shall make a determination as to whether an infraction~~  
256 ~~has been committed. If the commission of an infraction has been~~  
257 ~~proven, the court may impose a civil penalty not to exceed~~  
258 ~~\$5,000 plus court costs. In determining the amount of the civil~~  
259 ~~penalty, the court may consider previous noncriminal infractions~~  
260 ~~committed.~~

261 ~~(g) At a court hearing under this chapter, the commission~~

1-00896-19

2019848\_\_

262 ~~of a charged infraction must be proven by a preponderance of the~~  
263 ~~evidence.~~

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

267 ~~(i) Sunshine State One Call of Florida, Inc., may, at its~~  
268 ~~own cost, retain an attorney to assist in the presentation of~~  
269 ~~relevant facts and law in the county court proceeding pertaining~~  
270 ~~to the citation issued under this section. The corporation may~~  
271 ~~also appear in any case appealed to the circuit court if a~~  
272 ~~county court judge finds that an infraction of the chapter was~~  
273 ~~committed. An appellant in the circuit court proceeding shall~~  
274 ~~timely notify the corporation of any appeal under this section.~~

275 (2) UNDERGROUND FACILITY DAMAGE PREVENTION REVIEW PANEL  
276 CREATION.—

277 (a) The underground facility damage prevention review panel  
278 is established to review complaints of any alleged violation  
279 identified in subsection (1) or s. 556.116(2). The review panel  
280 shall consist of nine members appointed by the board of  
281 directors and shall include the following:

- 282 1. One member representing the electrical utility industry.
- 283 2. One member representing the telecommunications industry.
- 284 3. One member licensed as an underground utility and  
285 excavation contractor under chapter 489 and engaged in work  
286 within road or highway rights-of-way.
- 287 4. One member representing the natural gas industry.
- 288 5. One member representing the utility locator industry.
- 289 6. One member representing county or municipal water and  
290 sewer service providers.

1-00896-19

2019848\_\_

291 7. One member representing excavators performing work  
292 unrelated to construction in road or highway rights-of-way,  
293 including landscaping, fencing, or plumbing contractors.

294 8. One member licensed as an underground utility and  
295 excavation contractor under chapter 489 and engaged in work for  
296 public utilities.

297 9. One member representing the public at large.

298 (b) The board of directors shall establish a process to  
299 receive applications for the purpose of appointing members to  
300 the review panel.

301 (c) Each review panel member shall serve a 2-year term. A  
302 member may not serve more than two consecutive 2-year terms,  
303 except that members listed in subparagraphs (a)1.-5. shall  
304 initially serve a 1-year term and those members listed in  
305 subparagraphs (a)6.-9. shall serve a 2-year term. All subsequent  
306 appointments shall be for 2-year terms. A vacancy for an  
307 unexpired term of a member shall be filled in the same manner as  
308 the original appointment. The review panel shall elect a chair  
309 and vice chair and meet quarterly in conjunction with the  
310 meeting of the board of directors or at the call of the chair.

311 (d) The corporation shall provide staff support and meeting  
312 space to the review panel. To the extent expenses to operate the  
313 review panel are not offset through civil penalties recovered  
314 pursuant to subsection (5), member operators must equally share  
315 in the cost of the operation of the review panel through monthly  
316 assessments, which are in addition to those monthly assessments  
317 provided in s. 556.110.

318 (3) COMPLAINTS.—

319 (a) A complaint regarding an alleged violation listed in

1-00896-19

2019848\_\_

320 paragraph (1)(a) or s. 556.116(2) shall be submitted to the  
321 free-access notification system. Each complaint must include a  
322 short, plain statement identifying each transaction or  
323 occurrence giving rise to the complaint, the specific provisions  
324 in subsection (1) or s. 556.116(2) that were violated, the facts  
325 supporting the allegation that the violation occurred, and any  
326 other evidence supporting the complaint. A complaint may not be  
327 filed later than 30 days after the date the violation occurred  
328 or, for those violations that were not immediately observable or  
329 discoverable, 30 days after the date the complaining party knew  
330 or reasonably should have known of the existence of the  
331 violation.

332 (b) Within 5 business days after receiving a complaint  
333 submitted to the free-access notification system, the  
334 corporation must provide a copy of the complaint and supporting  
335 documents to the review panel. The corporation must also provide  
336 a copy and supporting documents to the party identified in the  
337 complaint as having committed a violation, together with a  
338 notice of the date and time of a meeting during which time the  
339 complaint will be considered by the review panel.

340 (4) REVIEW PANEL PROCESS AND DUTIES.-

341 (a) At the designated meeting date, the review panel must  
342 provide each party responding to a complaint an opportunity to  
343 present his or her argument and provide mitigating evidence  
344 regarding the alleged violation. At the conclusion of any  
345 presentation, the review panel shall determine whether the  
346 alleged violation occurred, and if it determines a violation has  
347 occurred, a recommendation as to civil penalties as set forth in  
348 subsection (5).

1-00896-19

2019848\_\_

349 (b) The review panel's determination and recommendation for  
350 a penalty shall be made by majority vote and must be reduced to  
351 writing. If the responding party consents to the determination  
352 and recommendation, the responding party shall execute the  
353 written document and agree to be bound by its provisions. The  
354 chair of the review panel shall also execute the document, which  
355 shall be enforceable in circuit court.

356 (5) PENALTIES.—If the review panel determines that the  
357 responding party has violated subsection (1) or s. 556.116(2),  
358 it may recommend that the party be required to pay a civil  
359 penalty consistent with the following guidelines:

360 (a) For a first violation, a civil penalty of up to \$1,000.

361 (b) For a second or subsequent violation, a civil penalty  
362 of up to \$5,000.

363 (c) A civil penalty of up to \$50,000, irrespective of  
364 whether it is a first or second violation may be assessed if a  
365 violation:

366 1. Damages property or facilities, including restoration  
367 costs, of greater than \$10,000;

368 2. Interrupts service to 500 or more customers;

369 3. Interrupts service to critical infrastructure  
370 facilities, including airports, hospitals, law enforcement, or  
371 fire and rescue facilities; or

372 4. Results in death or serious bodily injury requiring  
373 inpatient hospitalization.

374  
375 In lieu of, or in addition to, imposing a civil penalty for a  
376 first violation or in addition to imposing a civil penalty for a  
377 second or subsequent violation or for a violation meeting the

1-00896-19

2019848\_\_

378 thresholds in paragraph (c), the review panel may recommend  
379 damage prevention education and training.

380 (6) APPEALS.—

381 (a) If the responding party disputes the written document,  
382 either regarding the existence of a violation or regarding the  
383 penalty recommended therein, no later than 21 days after receipt  
384 of the written document, the responding party may request a  
385 hearing before the division. The request must be filed in  
386 writing with the free-access notification system and must  
387 specify the specific findings in the written document that are  
388 disputed. The free-access notification system must transmit the  
389 hearing request to the division within 5 business days after  
390 receipt so that the division may conduct a hearing to determine  
391 whether a violation has occurred and whether the penalty  
392 recommendation made by the review panel should be sustained.

393 (b)1. The division has jurisdiction under this section to  
394 determine the facts and law concerning an alleged violation of  
395 any of the provisions of subsection (1) or s. 556.116(2).

396 2. The division may impose a civil penalty in an amount not  
397 exceeding the maximum civil penalty amount provided for in  
398 subsection (5), or require the violator to receive damage  
399 prevention education and training, or both, if it finds a  
400 violation was committed.

401 3. The division shall issue and serve on all original  
402 parties an initial order that assigns the case to a specific  
403 administrative law judge and requests information regarding  
404 scheduling the final hearing within 5 business days after the  
405 division receives the request for hearing. The original parties  
406 in the proceeding include the petitioning party and the person

1-00896-19

2019848\_\_

407 or entity that filed the original complaint. The final hearing  
408 must be conducted within 60 days after the date the request for  
409 hearing is filed with the division.

410 4. Unless the parties otherwise agree, venue for the  
411 hearing shall be in the county in which the violation occurred.

412 5. An intervenor in the proceeding must file a petition to  
413 intervene no later than 15 business days before the final  
414 hearing. A person who has a substantial interest in the  
415 proceeding may intervene.

416 6. In any hearing, the following procedures apply:

417 a. A motion in opposition to the petition may be filed.

418 b. A motion requesting discovery beyond the informal  
419 exchange of documents and witness lists described in  
420 subparagraph 7. may be filed. Upon a showing of necessity,  
421 additional discovery may be permitted in the discretion of the  
422 administrative law judge, but only if the discovery can be  
423 completed no later than 5 business days before the final  
424 hearing.

425 c. A motion for continuance of the final hearing date may  
426 be filed.

427 d. No motions, other than those provided in this  
428 subparagraph, may be filed.

429 7. All parties shall attend a prehearing conference for the  
430 purpose of identifying the legal and factual issues to be  
431 considered at the final hearing, the names and addresses of  
432 witnesses who may be called to testify at the final hearing,  
433 documentary evidence that will be offered at the final hearing,  
434 the range of penalties that may be imposed, and any other matter  
435 that would expedite resolution of the proceeding. The prehearing

1-00896-19

2019848\_\_

436 conference may be held by telephone conference call.

437 8. The parties shall furnish to each other copies of  
438 documentary evidence and lists of witnesses who may testify at  
439 the final hearing at least 5 business days before the final  
440 hearing.

441 9. All parties shall have an opportunity to respond, to  
442 present evidence and argument on all issues involved, to conduct  
443 cross-examination and submit rebuttal evidence, and to be  
444 represented by counsel or other qualified representative.

445 10. The record shall consist only of:

446 a. All notices, pleadings, motions, and intermediate  
447 rulings.

448 b. Evidence received during the final hearing.

449 c. A statement of matters officially recognized.

450 d. Proffers of proof and objections and rulings thereon.

451 e. Matters placed on the record after an ex parte  
452 communication.

453 f. The written final order of the administrative law judge  
454 presiding at the final hearing.

455 g. The official transcript of the final hearing.

456 (c) The division shall accurately and completely preserve  
457 all testimony in the proceeding and, upon request by any party,  
458 shall make a full or partial transcript available at no more  
459 than actual cost.

460 (d) The administrative law judge shall issue a final order  
461 within 30 days after the final hearing or the filing of the  
462 transcript, whichever is later. The final order of the  
463 administrative law judge must include:

464 1. Findings of fact based exclusively on the evidence of



1-00896-19

2019848\_\_

465 record and matters officially recognized.

466 2. Conclusions of law. In determining whether a party has  
467 committed a violation of subsection (1) or s. 556.116(2), the  
468 violation must be proven by a preponderance of the evidence.

469 3. Imposition of a civil penalty, or a requirement for  
470 receiving damage prevention education and training, if  
471 applicable.

472 4. Any other information required by law or rule to be  
473 contained in a final order.

474  
475 The final order of the administrative law judge constitutes  
476 final agency action subject to judicial review pursuant to s.  
477 120.68.

478 (e) This subsection does not prevent the parties from  
479 reaching a voluntary resolution of the issues raised in the  
480 request for hearing at any time before the entry of a final  
481 order by the administrative law judge.

482 (7) FAILURE TO REQUEST A HEARING.—If a responding party  
483 disagrees with the determination or recommendation of the review  
484 panel, but fails to request a hearing before the division within  
485 21 days following the meeting as described in subsection (4),  
486 the review panel's written document shall become a final order,  
487 enforceable in circuit court.

488 (8) PAYMENT OF CIVIL PENALTIES.—Any civil penalties imposed  
489 under this section shall be paid to the free-access notification  
490 system, which shall use the collected penalties to satisfy the  
491 costs incurred by the system for any proceeding under this  
492 section, including expenses related to the review panel process.  
493 To the extent there are any funds remaining, the system may use

1-00896-19

2019848\_\_

494 the funds exclusively for damage prevention education and  
495 training.

496 ~~(2) REPORT OF INFRACTIONS.—By March 31 of each year, each~~  
497 ~~clerk of court shall submit a report to Sunshine State One Call~~  
498 ~~of Florida, Inc., listing each violation notice written under~~  
499 ~~paragraph (1) (a) which has been filed in that county during the~~  
500 ~~preceding calendar year. The report must state the name and~~  
501 ~~address of the member or excavator who committed each infraction~~  
502 ~~and indicate whether or not the civil penalty for the infraction~~  
503 ~~was paid.~~

504 (9) (3) MISDEMEANORS.—

505 (a) Any person who knowingly and willfully removes or  
506 otherwise destroys the valid stakes or other valid physical  
507 markings described in s. 556.105(5) (a) and (b) used to mark the  
508 horizontal route of an underground facility commits a  
509 misdemeanor of the second degree, punishable as provided in s.  
510 775.082 or s. 775.083. For purposes of this subsection, stakes  
511 or other nonpermanent physical markings are considered valid for  
512 30 calendar days after information is provided to the system  
513 under s. 556.105(1) (a).

514 (b) Any person who knowingly and willfully removes or  
515 damages a permanent marker, as defined in s. 556.102, placed to  
516 identify the approximate location of an underground facility  
517 commits a misdemeanor of the second degree, punishable as  
518 provided in s. 775.082 or s. 775.083.

519 Section 4. Subsection (4) of section 556.114, Florida  
520 Statutes, is amended to read:

521 556.114 Low-impact marking practices.—

522 (4) A member operator shall identify the horizontal route

1-00896-19

2019848\_\_

523 of its underground facilities as set forth in s. 556.105(5) (a)  
524 and (b), and excavators shall premark an excavation site as set  
525 forth in subsection (3) using flags or stakes or temporary,  
526 nonpermanent paint or other industry-accepted low-impact marking  
527 practices. However, a member operator may place permanent  
528 markers, as defined in s. 556.102, to permanently mark the  
529 approximate location of underground facilities.

530 Section 5. Paragraphs (b), (c), and (d) of subsection (3)  
531 and paragraph (g) of subsection (5) of section 556.116, Florida  
532 Statutes, are amended to read:

533 556.116 High-priority subsurface installations; special  
534 procedures.—

535 (3)

536 (b) Upon receipt of an allegation that an incident has  
537 occurred, the system shall transmit an incident report to the  
538 division and contract with the division so that the division may  
539 conduct a hearing to determine whether an incident has occurred,  
540 and, if so, whether a violation of s. 556.107(1) ~~s.~~

541 ~~556.107(1)(a)~~ was a proximate cause of the incident. The  
542 contract for services to be performed by the division must  
543 include provisions for the system to reimburse the division for  
544 any costs incurred by the division for court reporters,  
545 transcript preparation, travel, facility rental, and other  
546 customary hearing costs, in the manner set forth in s.  
547 120.65(9).

548 (c) The division has jurisdiction in a proceeding under  
549 this section to determine the facts and law concerning an  
550 alleged incident. The division may impose a fine against a  
551 violator in an amount not to exceed \$50,000 if the person

1-00896-19

2019848\_\_

552 violated a provision of s. 556.107(1) ~~s. 556.107(1)(a)~~ and that  
553 violation was a proximate cause of the incident. However, if a  
554 state agency or political subdivision caused the incident, the  
555 state agency or political subdivision may not be fined in an  
556 amount in excess of \$10,000.

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

560 (5) The following procedures apply:

561 (g) The administrative law judge shall issue a final order  
562 within 30 days after the final hearing or the filing of the  
563 transcript thereof, whichever is later. The final order of the  
564 administrative law judge must include:

565 1. Findings of fact based exclusively on the evidence of  
566 record and matters officially recognized.

567 2. Conclusions of law. In determining whether a party has  
568 committed an infraction of s. 556.107(1) ~~s. 556.107(1)(a)~~, and  
569 whether the infraction was a proximate cause of an incident, the  
570 commission of an infraction must be proven by a preponderance of  
571 the evidence.

572 3. Imposition of a fine, if applicable.

573 4. Any other information required by law or rule to be  
574 contained in a final order.

575

576 The final order of the administrative law judge constitutes  
577 final agency action subject to judicial review pursuant to s.  
578 120.68.

579 Section 6. This act shall take effect July 1, 2019.