

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Energy & Utilities  
2 Subcommittee

3 Representative Fitzenhagen offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 76-418 and insert:

7 (b) Any excavator or member operator who commits a  
8 noncriminal infraction under paragraph (a) may be issued a  
9 citation by the State Fire Marshal, the fire chief of the  
10 special district, municipality, or county, any local or state  
11 law enforcement officer, government code inspector, or code  
12 enforcement officer, and the issuer of a citation may require an  
13 excavator to cease work on any excavation or not start a  
14 proposed excavation until there has been compliance with the  
15 provisions of this chapter. Citations shall be hand delivered to  
16 any employee of the excavator or member operator who is involved

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17 in the noncriminal infraction. The citation shall be issued in  
18 the name of the excavator ~~or member operator, whichever is~~  
19 ~~applicable.~~

20 (c)1. Any excavator or member operator who commits a  
21 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~  
22 may be required to pay a civil penalty of \$500 plus court costs  
23 for each infraction, ~~which is \$500 plus court costs.~~ If a  
24 citation is issued by the State Fire Marshal, the fire chief of  
25 the special district, municipality, or county, a state law  
26 enforcement officer, a local law enforcement officer, a local  
27 government code inspector, or a code enforcement officer, 80  
28 percent of the civil penalty collected by the clerk of the court  
29 shall be distributed to the governmental entity whose employee  
30 issued the citation and 20 percent of the penalty shall be  
31 retained by the clerk to cover administrative costs, in addition  
32 to other court costs. Any person who fails to properly respond  
33 to a citation issued under ~~pursuant to~~ paragraph (b) shall, in  
34 addition to the citation, be charged with the offense of failing  
35 to respond to the citation and, upon conviction, commits a  
36 misdemeanor of the second degree, punishable as provided in s.  
37 775.082 or s. 775.083. A written warning to this effect must be  
38 provided at the time any citation is issued under ~~pursuant to~~  
39 paragraph (b).

40 2. Any excavator or member operator who commits a  
41 noncriminal infraction under subparagraph (a)2. may be required

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42 to pay an enhanced civil penalty of \$2,500 plus 5 percent in  
43 addition to any other court costs for each infraction. If a  
44 citation is issued by the State Fire Marshal, the fire chief of  
45 the special district, municipality, or county, a state law  
46 enforcement officer, a local law enforcement officer, a local  
47 government code inspector, or a code enforcement officer, 100  
48 percent of the civil penalty collected by the clerk of the court  
49 shall be distributed to the governmental entity whose employee  
50 issued the citation. The additional 5 percent, plus any  
51 additional court costs, is to be retained by the clerk to cover  
52 administrative costs. Any person who fails to properly respond  
53 to a citation issued under paragraph (b) shall, in addition to  
54 the citation, be charged with the offense of failing to respond  
55 to the citation and, upon conviction, commits a misdemeanor of  
56 the second degree, punishable as provided in s. 775.082 or s.  
57 775.083. A written warning to this effect must be provided at  
58 the time a citation is issued under paragraph (b).

59 (d) Any person cited for an infraction under paragraph (a)  
60 may post a bond, which must ~~shall~~ be equal in amount to the  
61 applicable civil penalty plus any additional court costs.

62 (e) A person charged with a noncriminal infraction under  
63 paragraph (a) may pay the applicable civil penalty plus the  
64 additional court costs, by mail or in person, within 30 days  
65 after the date of receiving the citation. If the person cited  
66 pays the civil penalty, she or he is deemed to have admitted to

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67 committing the infraction and to have waived the right to a  
68 hearing on the issue of commission of the infraction. The  
69 admission may be used as evidence in any other proceeding under  
70 this chapter.

71 (f) Any person may elect to have a hearing on the  
72 commission of the infraction ~~appear~~ before the county court. A  
73 person who elects to have a hearing waives ~~and if so electing is~~  
74 ~~deemed to have waived~~ the limitations on the civil penalties  
75 ~~penalty~~ specified in paragraph (c). The court, after a hearing,  
76 shall make a determination as to whether an infraction has been  
77 committed. If the commission of an infraction has been proven,  
78 the court may impose a civil penalty not to exceed \$5,000 plus  
79 court costs for each infraction. In determining the amount of  
80 the civil penalty, the court may consider previous noncriminal  
81 infractions committed.

82 (g) At a court hearing under this chapter, the commission  
83 of a charged infraction must be proven by a preponderance of the  
84 evidence.

85 (h) If the court finds that a person ~~is found by a judge~~  
86 ~~or hearing official to have~~ committed an infraction, the person  
87 may appeal that finding or the amount of the civil penalties  
88 imposed to the circuit court.

89 (i) Sunshine State One-Call of Florida, Inc., may, at its  
90 own cost, retain an attorney to assist in the presentation of  
91 relevant facts and law in the county court proceeding pertaining

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92 to the citation issued under this section. The corporation may  
93 also appear in any case appealed to the circuit court if a  
94 county court judge finds that an infraction of the chapter was  
95 committed. An appellant in the circuit court proceeding shall  
96 timely notify the corporation of any appeal under this section.

97 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
98 clerk of court shall submit a report to the State Fire Marshal  
99 and Sunshine State One-Call of Florida, Inc., listing each  
100 violation notice written under paragraph (1)(a) which has been  
101 filed in that county during the preceding calendar year. The  
102 report must state the name and address of the member or  
103 excavator who committed each infraction and indicate whether or  
104 not the civil penalty for the infraction was paid.

105 (3) MISDEMEANORS.—Any person who knowingly and willfully  
106 removes or otherwise destroys the valid stakes or other valid  
107 physical markings described in s. 556.105(5)(a) and (b) used to  
108 mark the horizontal route of an underground facility commits a  
109 misdemeanor of the second degree, punishable as provided in s.  
110 775.082 or s. 775.083. For purposes of this subsection, stakes  
111 or other nonpermanent physical markings are considered valid for  
112 30 calendar days after information is provided to the system  
113 under s. 556.105(1)(a).

114 Section 2. Section 556.116, Florida Statutes, is amended  
115 to read:

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116 556.116 High-priority subsurface installations; special  
117 procedures.—

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

119 ~~(a) "Division" means the Division of Administrative~~  
120 ~~Hearings.~~

121 (a) ~~(b)~~ "High-priority subsurface installation" means an  
122 underground gas transmission or gas distribution pipeline, an  
123 underground pipeline used to transport gasoline, jet fuel, or  
124 any other refined petroleum product or hazardous or highly  
125 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
126 the pipeline is deemed to be critical by the operator of the  
127 pipeline and is identified as a high-priority subsurface  
128 installation to an excavator who has provided a notice of intent  
129 to excavate under ~~pursuant to~~ s. 556.105(1), or would have been  
130 identified as a high-priority subsurface installation except for  
131 the excavator's failure to give proper notice of intent to  
132 excavate.

133 (b) ~~(e)~~ "Incident" means an event that involves damage to a  
134 high-priority subsurface installation that has been identified  
135 as such by the operator according to the notification procedures  
136 set forth in subsection (2) and that:

137 1. Results in death or serious bodily injury requiring  
138 inpatient hospitalization.

139 2. Results in property damage, including service-  
140 restoration costs, in an amount in excess of \$50,000 or

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141 interruption of service to 2,500 or more customers.

142 (2) When an excavator proposes to excavate or demolish  
143 within 15 feet of the horizontal route of an underground  
144 facility that has been identified as a high-priority subsurface  
145 installation by the operator of the facility, the operator  
146 shall, in addition to identifying the horizontal route of its  
147 facility as set forth in s. 556.105(5)(a) and (b), and within  
148 the time period set forth in s. 556.105(9)(a) for a positive  
149 response, notify the excavator that the facility is a high-  
150 priority subsurface installation. If the member operator  
151 provides such timely notice of the existence of a high-priority  
152 subsurface installation, an excavator shall notify the operator  
153 of the planned excavation start date and time before beginning  
154 excavation. If the member operator does not provide timely  
155 notice, the excavator may proceed, after waiting the prescribed  
156 time period set forth in s. 556.105(9)(a), to excavate without  
157 notifying the member operator of the excavation start date and  
158 time. The exemptions stated in s. 556.108 apply to the  
159 notification requirements in this subsection.

160 (3)(a) An alleged commission of an infraction listed in s.  
161 556.107(1) which results in an incident must be reported to the  
162 system by a member operator or an excavator within 24 hours  
163 after learning of the alleged occurrence of an incident.

164 (b) Upon receipt of an allegation that an incident has  
165 occurred, the system shall transmit an incident report to the

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166 State Fire Marshal, the fire chief of the special district,  
167 municipality, or county, a local or state law enforcement  
168 officer, a government code inspector, or a code enforcement  
169 officer in order to ~~division and contract with the division so~~  
170 that the division may conduct an investigation a hearing to  
171 determine whether an incident has occurred, and, if so, whether  
172 a violation of s. 556.107(1)(a) was a proximate cause of the  
173 incident. ~~The contract for services to be performed by the~~  
174 ~~division must include provisions for the system to reimburse the~~  
175 ~~division for any costs incurred by the division for court~~  
176 ~~reporters, transcript preparation, travel, facility rental, and~~  
177 ~~other customary hearing costs, in the manner set forth in s.~~  
178 ~~120.65(9).~~

179 (c) The State Fire Marshal, the fire chief of the special  
180 district, municipality, or county, a local or state law  
181 enforcement officer, a government code inspector, or a code  
182 enforcement officer ~~division has jurisdiction in a proceeding~~  
183 ~~under this section to determine the facts and law concerning an~~  
184 ~~alleged incident. The division may issue a citation and impose a~~  
185 civil penalty fine against a violator in an amount not to exceed  
186 \$50,000 if the person violated a provision of s. 556.107(1)(a)  
187 and that violation was a proximate cause of the incident.  
188 However, if a state agency or political subdivision caused the  
189 incident, the state agency or political subdivision may not be  
190 fined in an amount in excess of \$10,000.

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191 (d) The civil penalty A fine imposed under this subsection  
192 ~~by the division~~ is in addition to any amount payable as a result  
193 of a citation relating to the incident under s. 556.107(1) (a).

194 (e) If a civil penalty is imposed by the State Fire  
195 Marshal, the fire chief of the special district, municipality,  
196 or county, a local or state law enforcement officer, a  
197 government code inspector, or a code enforcement officer under  
198 this subsection, 95 percent of the civil penalty collected by  
199 the clerk of the court shall be distributed to the governmental  
200 entity whose employee issued the citation and civil penalty and  
201 5 percent of the civil penalty shall be retained by the clerk to  
202 cover administrative costs ~~A fine against an excavator or a~~  
203 ~~member operator imposed under this subsection shall be paid to~~  
204 ~~the system, which shall use the collected fines to satisfy the~~  
205 ~~costs incurred by the system for any proceedings under this~~  
206 ~~section. To the extent there are any funds remaining, the system~~  
207 ~~may use the funds exclusively for damage-prevention education.~~

208 (f) This section does not change the basis for civil  
209 liability. The findings and results of an investigation a  
210 ~~hearing~~ under this section may not be used as evidence of  
211 liability in any civil action.

212 ~~(4)(a) The division shall issue and serve on all original~~  
213 ~~parties an initial order that assigns the case to a specific~~  
214 ~~administrative law judge and requests information regarding~~  
215 ~~scheduling the final hearing within 5 business days after the~~

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216 ~~division receives a petition or request for hearing. The~~  
217 ~~original parties in the proceeding include all excavators and~~  
218 ~~member operators identified by the system as being involved in~~  
219 ~~the alleged incident. The final hearing must be conducted within~~  
220 ~~60 days after the date the petition or the request for a hearing~~  
221 ~~is filed with the division.~~

222 ~~(b) Unless the parties otherwise agree, venue for the~~  
223 ~~hearing shall be in the county in which the underground facility~~  
224 ~~is located.~~

225 ~~(c) An intervenor in the proceeding must file a petition~~  
226 ~~to intervene no later than 15 days before the final hearing. A~~  
227 ~~person who has a substantial interest in the proceeding may~~  
228 ~~intervene.~~

229 ~~(5) The following procedures apply:~~

230 ~~(a) Motions shall be limited to the following:~~

231 ~~1. A motion in opposition to the petition.~~

232 ~~2. A motion requesting discovery beyond the informal~~  
233 ~~exchange of documents and witness lists described in paragraph~~  
234 ~~(c). Upon a showing of necessity, additional discovery may be~~  
235 ~~permitted in the discretion of the administrative law judge, but~~  
236 ~~only if the discovery can be completed no later than 5 days~~  
237 ~~before the final hearing.~~

238 ~~3. A motion for continuance of the final hearing date.~~

239 ~~(b) All parties shall attend a prehearing conference for~~  
240 ~~the purpose of identifying the legal and factual issues to be~~

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241 ~~considered at the final hearing, the names and addresses of~~  
242 ~~witnesses who may be called to testify at the final hearing,~~  
243 ~~documentary evidence that will be offered at the final hearing,~~  
244 ~~the range of penalties that may be imposed, and any other matter~~  
245 ~~that would expedite resolution of the proceeding. The prehearing~~  
246 ~~conference may be held by telephone conference call.~~

247 ~~(c) Not later than 5 days before the final hearing, the~~  
248 ~~parties shall furnish to each other copies of documentary~~  
249 ~~evidence and lists of witnesses who may testify at the final~~  
250 ~~hearing.~~

251 ~~(d) All parties shall have an opportunity to respond, to~~  
252 ~~present evidence and argument on all issues involved, to conduct~~  
253 ~~cross-examination and submit rebuttal evidence, and to be~~  
254 ~~represented by counsel or other qualified representative.~~

255 ~~(e) The record shall consist only of:~~

256 ~~1. All notices, pleadings, motions, and intermediate~~  
257 ~~rulings.~~

258 ~~2. Evidence received during the final hearing.~~

259 ~~3. A statement of matters officially recognized.~~

260 ~~4. Proffers of proof and objections and rulings thereon.~~

261 ~~5. Matters placed on the record after an ex parte~~  
262 ~~communication.~~

263 ~~6. The written final order of the administrative law judge~~  
264 ~~presiding at the final hearing.~~

265 ~~7. The official transcript of the final hearing.~~

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266 ~~(f) The division shall accurately and completely preserve~~  
267 ~~all testimony in the proceeding and, upon request by any party,~~  
268 ~~shall make a full or partial transcript available at no more~~  
269 ~~than actual cost.~~

270 ~~(g) The administrative law judge shall issue a final order~~  
271 ~~within 30 days after the final hearing or the filing of the~~  
272 ~~transcript thereof, whichever is later. The final order of the~~  
273 ~~administrative law judge must include:~~

274 ~~1. Findings of fact based exclusively on the evidence of~~  
275 ~~record and matters officially recognized.~~

276 ~~2. Conclusions of law. In determining whether a party has~~  
277 ~~committed an infraction of s. 556.107(1)(a), and whether the~~  
278 ~~infraction was a proximate cause of an incident, the commission~~  
279 ~~of an infraction must be proven by a preponderance of the~~  
280 ~~evidence.~~

281 ~~3. Imposition of a fine, if applicable.~~

282 ~~4. Any other information required by law or rule to be~~  
283 ~~contained in a final order.~~

284  
285 ~~The final order of the administrative law judge constitutes~~  
286 ~~final agency action subject to judicial review pursuant to s.~~  
287 ~~120.68~~

288 Section 3. Section 556.117, Florida Statutes, is created  
289 to read:

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290 556.117 Underground facility damage prevention review  
291 panel.-

292 (1) The underground facility damage prevention review  
293 panel is established under the Division of State Fire Marshal  
294 within the Department of Financial Services to review complaints  
295 of an alleged violation under this chapter to identify issues or  
296 potential issues with damage prevention and enforcement. The  
297 review panel shall identify areas in the state where additional  
298 education related to damage prevention and enforcement is needed  
299 and shall recommend solutions to remedy issues related to damage  
300 prevention and enforcement. The review panel shall also review  
301 current practices for locating underground pipes or other  
302 underground facilities that transport hazardous materials which  
303 are regulated by the Pipeline and Hazardous Materials Safety  
304 Administration of the United States Department of Transportation  
305 in the state and determine if any statutory changes are needed  
306 to make such pipelines or facilities more resilient and safer  
307 for communities. Except as otherwise provided in this section,  
308 the review panel shall operate in a manner consistent with s.  
309 20.052.

310 (2) The review panel shall consist of nine members  
311 appointed by the State Fire Marshal and shall include the  
312 following:

313 (a) One member representing the electrical utility  
314 industry.

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315 (b) One member representing the telecommunications  
316 industry.

317 (c) One member licensed as an underground utility and  
318 excavation contractor under chapter 489 and engaged in work  
319 within road or highway rights-of-way.

320 (d) One member representing the natural gas industry.

321 (e) One member representing the utility locator industry.

322 (f) One member representing county or municipal water and  
323 sewer service providers.

324 (g) One member representing excavators performing work  
325 unrelated to construction in road or highway rights-of-way,  
326 including landscaping, fencing, or plumbing contractors.

327 (h) One member licensed as an underground utility and  
328 excavation contractor under chapter 489 and engaged in work for  
329 public utilities.

330 (i) One member representing the public at large.

331 (3) The board of directors shall establish a process to  
332 receive applications for the purpose of appointing members to  
333 the review panel.

334 (4) Each member shall serve for a 2-year term. A member  
335 may not serve more than two consecutive 2-year terms, except  
336 that members listed in paragraphs (2)(a)-(e) shall initially  
337 serve a 1-year term and those members listed in paragraphs  
338 (2)(f)-(i) shall serve a 2-year term. All subsequent  
339 appointments shall be for 2-year terms. A vacancy for an

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340 unexpired term of a member shall be filled in the same manner as  
341 the original appointment. The review panel shall elect from  
342 among its members a chair and vice chair and meet quarterly in  
343 conjunction with the meeting of the board of directors or at the  
344 call of the chair.

345 (5) The Division of State Fire Marshal shall provide staff  
346 support and meeting space to the review panel. Members of the  
347 panel shall serve without reimbursement of expenses and shall  
348 receive no compensation for their service.

349

350

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351

**T I T L E   A M E N D M E N T**

352

Remove lines 27-28 and insert:

353

to the review panel; providing an effective date.