

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN (Y/N)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

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Fitzenhagen offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Present subsections (8) and (9) through (14) of
7 section 556.102, Florida Statutes, are redesignated as
8 subsections (10) and (12) through (17), respectively, and new
9 subsections (8), (9), and (11) are added to that section, to
10 read:

11 556.102 Definitions.—As used in this act:

12 (8) "High-priority subsurface installation" means an
13 underground gas transmission or gas distribution pipeline, or an
14 underground pipeline used to transport gasoline, jet fuel, or
15 any other refined petroleum product or hazardous or highly
16 volatile liquid, such as anhydrous ammonia or carbon dioxide, if

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17 the pipeline is deemed to be critical by the operator of the
18 pipeline and is identified as a high-priority subsurface
19 installation to an excavator who has provided a notice of intent
20 to excavate under to s. 556.105(1), or would have been
21 identified as a high-priority subsurface installation except for
22 the excavator's failure to give proper notice of intent to
23 excavate.

24 (9) "Incident" means an event that involves damage to a
25 high-priority subsurface installation that has been identified
26 as such by the operator according to the notification procedures
27 set forth in s. 556.116(1) and that:

28 1. Results in death or serious bodily injury requiring
29 inpatient hospitalization.

30 2. Results in property damage, including service-
31 restoration costs, in an amount in excess of \$50,000 or
32 interruption of service to 2,500 or more customers.

33 (11) "Permanent marker" means a clearly visible indication
34 of the approximate location of an underground facility which is
35 made of material that is durable in nature and which is
36 reasonably expected to remain in position for the life of the
37 underground facility.

38 Section 2. Section 556.107, Florida Statutes, is amended
39 to read:

40 556.107 Violations.—

41 (1) NONCRIMINAL INFRACTIONS.—

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42 (a)1. Violations of the following provisions are
43 noncriminal infractions:

44 ~~a.1.~~ Section 556.105(1), relating to providing required
45 information.

46 b. Section 556.105(5)(c), relating to excavation practices
47 in tolerance zones.

48 ~~c.2.~~ Section 556.105(6), relating to the avoidance of
49 excavation.

50 ~~d.3.~~ Section 556.105(11), relating to the need to stop
51 excavation or demolition because marks are no longer visible,
52 or, in the case of underwater facilities, are inadequately
53 documented.

54 ~~e.4.~~ Section 556.105(12), relating to the need to cease
55 excavation or demolition activities because of contact or damage
56 to an underground facility.

57 ~~f.5.~~ Section 556.105(5)(a) and (b), relating to
58 identification of underground facilities, if a member operator
59 does not mark an underground facility, but not if a member
60 operator marks an underground facility incorrectly.

61 ~~g.6.~~ Section 556.109(2), relating to falsely notifying the
62 system of an emergency situation or condition.

63 ~~h.7.~~ Section 556.114(1), (2), (3), and (4), relating to a
64 failure to follow low-impact marking practices, as defined
65 therein.

66 2. Violations of the following provisions involving an

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67 underground facility transporting hazardous materials that are
68 regulated by the Pipeline and Hazardous Materials Safety
69 Administration of the United States Department of Transportation
70 are noncriminal infractions, subject to enhanced civil penalties
71 under paragraph (c):

72 a. Section 556.105(1), relating to providing required
73 information.

74 b. Section 556.105(5)(c), relating to excavation practices
75 in tolerance zones.

76 c. Section 556.105(6), relating to the avoidance of
77 certain excavation.

78 d. Section 556.105(11), relating to the need to stop
79 excavation or demolition because certain marks are no longer
80 visible or are inadequately documented.

81 e. Section 556.105(12), relating to the need to cease
82 excavation or demolition activities because of contact or damage
83 to an underground facility.

84 (b) Any excavator or member operator who commits a
85 noncriminal infraction under paragraph (a) may be issued a
86 citation by the State Fire Marshal or agents as provided in ss.
87 633.114 and 633.116; the fire chief of the special district,
88 municipality, or county; or any local or state law enforcement
89 officer, government code inspector, or code enforcement officer,
90 and the issuer of a citation may require an excavator to cease
91 work on any excavation or not start a proposed excavation until

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92 there has been compliance with the provisions of this chapter.
93 Citations shall be hand delivered to any employee of the
94 excavator or member operator who is involved in the noncriminal
95 infraction. The citation shall be issued in the name of the
96 excavator or member operator, whichever is applicable.

97 (c)1. Any excavator or member operator who commits a
98 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~
99 may be required to pay a civil penalty of \$500 plus court costs
100 for each infraction, ~~which is \$500 plus court costs.~~ If a
101 citation is issued ~~by a state law enforcement officer, a local~~
102 ~~law enforcement officer, a local government code inspector, or a~~
103 ~~code enforcement officer,~~ 80 percent of the civil penalty
104 collected by the clerk of the court must ~~shall~~ be distributed to
105 the governmental entity whose employee issued the citation and
106 20 percent of the penalty must ~~shall~~ be retained by the clerk ~~to~~
107 ~~cover administrative costs,~~ in addition to any ~~other~~ court
108 costs. Any person who fails to properly respond to a citation
109 issued under ~~pursuant to~~ paragraph (b) shall, in addition to the
110 citation, be charged with the offense of failing to respond to
111 the citation and, upon conviction, commits a misdemeanor of the
112 second degree, punishable as provided in s. 775.082 or s.
113 775.083. A written warning to this effect must be provided at
114 the time any citation is issued under ~~pursuant to~~ paragraph (b).

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

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117 to pay an enhanced civil penalty of \$2,500 plus court costs for
118 each infraction. If a citation is issued, 80 percent of the
119 civil penalty collected by the clerk of the court must be
120 distributed to the governmental entity whose employee issued the
121 citation and 20 percent must be retained by the clerk in
122 addition to any court costs.

123 3. Any person who willfully fails to properly respond to a
124 citation issued under paragraph (b) shall, in addition to the
125 citation, be charged with the offense of failing to respond to
126 the citation and, upon conviction, commits a misdemeanor of the
127 second degree, punishable as provided in s. 775.082 or s.
128 775.083. A written warning to this effect must be provided at
129 the time a citation is issued under paragraph (b).

130 (d) Any person cited for an infraction under paragraph (a)
131 or s. 556.116(2)(c) may post a bond, which must ~~shall~~ be equal
132 in amount to the applicable civil penalty plus any additional
133 court costs.

134 (e) A person charged with a noncriminal infraction under
135 paragraph (a) or s. 556.116(2)(c) may pay the applicable civil
136 penalty plus the additional court costs, by mail or in person,
137 within 30 days after the date of receiving the citation. If the
138 person cited pays the civil penalty, she or he is deemed to have
139 admitted to committing the infraction and to have waived the
140 right to a hearing on the issue of commission of the infraction.
141 The admission may be used as evidence in any other proceeding

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142 under this chapter.

143 (f) Any person may elect to have a hearing on the
144 commission of the infraction ~~appear~~ before the county court. A
145 person who elects to have a hearing waives ~~and if so electing is~~
146 ~~deemed to have waived~~ the limitations on the civil penalties
147 ~~penalty~~ specified in paragraph (c). The court, after a hearing,
148 shall make a determination as to whether an infraction has been
149 committed. If the commission of an infraction has been proven,
150 the court may impose a civil penalty not to exceed the
151 applicable civil penalty ~~\$5,000~~ plus court costs for each
152 infraction. In determining the amount of the civil penalty, the
153 court may consider previous noncriminal infractions committed.

154 (g) At a court hearing under this chapter, the commission
155 of a charged infraction must be proven by a preponderance of the
156 evidence.

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

161 (i) Sunshine State One-Call of Florida, Inc., may, at its
162 own cost, retain an attorney to assist in the presentation of
163 relevant facts and law in the county court proceeding pertaining
164 to the citation issued under this section. The corporation may
165 also appear in any case appealed to the circuit court if a
166 county court judge finds that an infraction of the chapter was

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167 committed. An appellant in the ~~circuit~~ court proceeding shall
168 timely notify the corporation of any appeal under this section.

169 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
170 clerk of court shall submit a report to the State Fire Marshal
171 and Sunshine State One-Call of Florida, Inc., listing each
172 citation issued for a violation ~~notice written~~ under paragraph
173 (1)(a) and s. 556.116(2)(c) which has been filed in that county
174 during the preceding calendar year. The report must state the
175 name and address of the member or excavator who committed each
176 infraction, the enforcement authority, the specific statutory
177 infraction, and the type of underground facility related to the
178 infraction and must indicate whether or not the civil penalty
179 for the infraction was paid.

180 (3) MISDEMEANORS.—

181 (a) Any person who knowingly and willfully removes or
182 otherwise destroys the valid stakes or other valid physical
183 markings described in s. 556.105(5)(a) and (b) used to mark the
184 horizontal route of an underground facility commits a
185 misdemeanor of the second degree, punishable as provided in s.
186 775.082 or s. 775.083. For purposes of this subsection, stakes
187 or other nonpermanent physical markings are considered valid for
188 30 calendar days after information is provided to the system
189 under s. 556.105(1)(a).

190 (b) Any person who knowingly and willfully removes or
191 damages a permanent marker placed to identify the approximate

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192 location of an underground facility commits a misdemeanor of the
193 second degree, punishable as provided in s. 775.082 or s.
194 775.083.

195 Section 3. Section 556.116, Florida Statutes, is amended
196 to read:

197 556.116 High-priority subsurface installations; special
198 procedures.—

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

200 ~~(a) "Division" means the Division of Administrative~~
201 ~~Hearings.~~

202 ~~(b) "High-priority subsurface installation" means an~~
203 ~~underground gas transmission or gas distribution pipeline, an~~
204 ~~underground pipeline used to transport gasoline, jet fuel, or~~
205 ~~any other refined petroleum product or hazardous or highly~~
206 ~~volatile liquid, such as anhydrous ammonia or carbon dioxide, if~~
207 ~~the pipeline is deemed to be critical by the operator of the~~
208 ~~pipeline and is identified as a high-priority subsurface~~
209 ~~installation to an excavator who has provided a notice of intent~~
210 ~~to excavate pursuant to s. 556.105(1), or would have been~~
211 ~~identified as a high-priority subsurface installation except for~~
212 ~~the excavator's failure to give proper notice of intent to~~
213 ~~excavate.~~

214 ~~(c) "Incident" means an event that involves damage to a~~
215 ~~high-priority subsurface installation that has been identified~~
216 ~~as such by the operator according to the notification procedures~~

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217 | ~~set forth in subsection (2) and that:~~

218 | ~~1. Results in death or serious bodily injury requiring~~
219 | ~~inpatient hospitalization.~~

220 | ~~2. Results in property damage, including service-~~
221 | ~~restoration costs, in an amount in excess of \$50,000 or~~
222 | ~~interruption of service to 2,500 or more customers.~~

223 | ~~(2)~~ When an excavator proposes to excavate or demolish
224 | within 15 feet of the horizontal route of an underground
225 | facility that has been identified as a high-priority subsurface
226 | installation by the operator of the facility, the operator
227 | shall, in addition to identifying the horizontal route of its
228 | facility as set forth in s. 556.105(5) (a) and (b), and within
229 | the time period set forth in s. 556.105(9) (a) for a positive
230 | response, notify the excavator that the facility is a high-
231 | priority subsurface installation. If the member operator
232 | provides such timely notice of the existence of a high-priority
233 | subsurface installation, an excavator shall notify the operator
234 | of the planned excavation start date and time before beginning
235 | excavation. If the member operator does not provide timely
236 | notice, the excavator may proceed, after waiting the prescribed
237 | time period set forth in s. 556.105(9) (a), to excavate without
238 | notifying the member operator of the excavation start date and
239 | time. The exemptions stated in s. 556.108 apply to the
240 | notification requirements in this subsection.

241 | (2) (a) ~~(3) (a)~~ An alleged commission of an infraction listed

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242 in s. 556.107(1) which results in an incident must be reported
243 to the system and the State Fire Marshal by a member operator or
244 an excavator within 24 hours after learning of the alleged
245 occurrence of an incident.

246 (b) Upon receipt of an allegation that an incident has
247 occurred, the member operator or excavator ~~system~~ shall transmit
248 an incident report to the State Fire Marshal, who shall ~~division~~
249 ~~and contract with the division so that the division may~~ conduct
250 an investigation ~~a hearing~~ to determine whether an incident has
251 occurred, and, if so, whether a violation of s. 556.107(1) (a)
252 was a proximate cause of the incident. The State Fire Marshal
253 may authorize its agents as provided in ss. 633.114, 633.116,
254 and 633.118 to conduct investigations of incidents ~~The contract~~
255 ~~for services to be performed by the division must include~~
256 ~~provisions for the system to reimburse the division for any~~
257 ~~costs incurred by the division for court reporters, transcript~~
258 ~~preparation, travel, facility rental, and other customary~~
259 ~~hearing costs, in the manner set forth in s. 120.65(9).~~

260 (c) The State Fire Marshal or agents as provided in ss.
261 633.114, 633.116, and 633.118 ~~division has jurisdiction in a~~
262 ~~proceeding under this section to determine the facts and law~~
263 ~~concerning an alleged incident. The division may~~ issue a
264 citation and impose a civil penalty ~~fine~~ against a violator in
265 an amount not to exceed \$50,000 if the person violated a
266 provision of s. 556.107(1) (a) and that violation was a proximate

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267 cause of the incident. However, if a state agency or political
268 subdivision caused the incident, the state agency or political
269 subdivision may not be fined in an amount in excess of \$10,000.

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

273 (e) If an additional civil penalty is imposed by the State
274 Fire Marshal or his or her agents, 5 percent of the civil
275 penalty must be retained by the clerk to cover administrative
276 costs, and the remainder of the civil penalty must be
277 distributed equally between the system and the State Fire
278 Marshal. The portion of the civil penalty distributed to the
279 system must be used exclusively to fund damage-prevention
280 education. The portion of the civil penalty distributed to the
281 State Fire Marshal must be used exclusively to fund programs
282 created within the State Fire Marshal's office that provide
283 need-based financial assistance to help fire departments,
284 including volunteer fire departments, procure equipment,
285 supplies, and educational training designed to mitigate
286 firefighter exposure to hazardous, cancer-causing chemicals ~~A~~
287 ~~fine against an excavator or a member operator imposed under~~
288 ~~this subsection shall be paid to the system, which shall use the~~
289 ~~collected fines to satisfy the costs incurred by the system for~~
290 ~~any proceedings under this section. To the extent there are any~~
291 ~~funds remaining, the system may use the funds exclusively for~~

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292 ~~damage-prevention education.~~

293 (f) Any excavator or member operator who commits a
294 noncriminal infraction under s. 556.116(2)(c) must be provided a
295 written warning at the time a citation is issued stating that
296 any person who willfully fails to properly respond to a citation
297 must, in addition to the citation, be charged with the offense
298 of failing to respond to the citation and, upon conviction,
299 commits a misdemeanor of the second degree, punishable as
300 provided in s. 775.082 or s. 775.083.

301 (g) This section does not change the basis for civil
302 liability. The findings and results of an investigation a
303 hearing under this section may not be used as evidence of
304 liability in any civil action.

305 ~~(4)(a) The division shall issue and serve on all original~~
306 ~~parties an initial order that assigns the case to a specific~~
307 ~~administrative law judge and requests information regarding~~
308 ~~scheduling the final hearing within 5 business days after the~~
309 ~~division receives a petition or request for hearing. The~~
310 ~~original parties in the proceeding include all excavators and~~
311 ~~member operators identified by the system as being involved in~~
312 ~~the alleged incident. The final hearing must be conducted within~~
313 ~~60 days after the date the petition or the request for a hearing~~
314 ~~is filed with the division.~~

315 ~~(b) Unless the parties otherwise agree, venue for the~~
316 ~~hearing shall be in the county in which the underground facility~~

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317 ~~is located.~~

318 ~~(c) An intervenor in the proceeding must file a petition~~
319 ~~to intervene no later than 15 days before the final hearing. A~~
320 ~~person who has a substantial interest in the proceeding may~~
321 ~~intervene.~~

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

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

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

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

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

332 ~~(b) All parties shall attend a prehearing conference for~~
333 ~~the purpose of identifying the legal and factual issues to be~~
334 ~~considered at the final hearing, the names and addresses of~~
335 ~~witnesses who may be called to testify at the final hearing,~~
336 ~~documentary evidence that will be offered at the final hearing,~~
337 ~~the range of penalties that may be imposed, and any other matter~~
338 ~~that would expedite resolution of the proceeding. The prehearing~~
339 ~~conference may be held by telephone conference call.~~

340 ~~(c) Not later than 5 days before the final hearing, the~~
341 ~~parties shall furnish to each other copies of documentary~~

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342 ~~evidence and lists of witnesses who may testify at the final~~
343 ~~hearing.~~

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

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

349 ~~1. All notices, pleadings, motions, and intermediate~~
350 ~~rulings.~~

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

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

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

354 ~~5. Matters placed on the record after an ex parte~~
355 ~~communication.~~

356 ~~6. The written final order of the administrative law judge~~
357 ~~presiding at the final hearing.~~

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

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

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

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

369 ~~2. Conclusions of law. In determining whether a party has~~
370 ~~committed an infraction of s. 556.107(1)(a), and whether the~~
371 ~~infraction was a proximate cause of an incident, the commission~~
372 ~~of an infraction must be proven by a preponderance of the~~
373 ~~evidence.~~

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

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

377
378 ~~The final order of the administrative law judge constitutes~~
379 ~~final agency action subject to judicial review pursuant to s.~~
380 ~~120.68.~~

381 Section 4. Section 556.117, Florida Statutes, is created
382 to read:

383 556.117 Underground facility damage prevention review.-
384 Sunshine State One-Call of Florida, Inc., shall review the
385 reports submitted by the clerks of court to the State Fire
386 Marshal and any complaints of alleged violations under this
387 chapter to identify issues or potential issues with damage
388 prevention and enforcement. The corporation shall identify areas
389 in the state where additional education related to damage
390 prevention and enforcement is needed and shall recommend
391 solutions to remedy issues related to damage prevention and

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392 enforcement. The corporation shall, by October 1 of each year,
393 submit to the Governor, the President of the Senate, and the
394 Speaker of the House of Representatives an analysis of its
395 reviews and any recommendations for improving underground
396 facility damage prevention and enforcement.

397 Section 5. This act shall take effect July 1, 2020.

398

399

400

T I T L E A M E N D M E N T

401

Remove everything before the enacting clause and insert:

402

An act relating to underground facility damage prevention and

403

safety; amending s. 556.102, F.S.; defining the term "permanent

404

marker" and consolidating other definitions from throughout the

405

chapter; amending s. 556.107, F.S.; revising noncriminal

406

violations and providing noncriminal violations relating to the

407

transportation of certain hazardous materials; authorizing the

408

State Fire Marshal or his or her agents to issue certain

409

citations; providing enhanced civil penalties; providing

410

disposition of the civil penalty; requiring a report by

411

additional entities; providing civil penalties relating to

412

removing or damaging a permanent marker; amending s. 556.116,

413

F.S.; moving and consolidating definitions to the definition

414

section for the chapter; providing that certain incident reports

415

must be submitted to, and investigated by, the State Fire

416

Marshal or his or her agents; authorizing the State Fire Marshal

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417 | or his or her agents to issue citations and civil penalties;
418 | providing for disposition of the civil penalty; requiring
419 | written warnings for certain noncriminal infractions; providing
420 | for an enhanced penalty upon conviction for a failure to
421 | respond; removing provisions relating to hearings by the
422 | Division of Administrative Hearings of certain incidents;
423 | creating s. 556.117, F.S.; requiring Sunshine State One-Call of
424 | Florida, Inc., to review certain reports and complaints;
425 | requiring the corporation to identify areas for additional
426 | education and recommend solutions; requiring an annual report to
427 | the Governor and the Legislature; providing an effective date.

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