

1                   A bill to be entitled  
2           An act relating to underground facility damage  
3           prevention and safety; amending s. 556.107, F.S.;  
4           providing noncriminal violations relating to the  
5           transportation of certain hazardous materials;  
6           authorizing the State Fire Marshal or local fire chief  
7           to issue certain citations; providing enhanced civil  
8           penalties; providing disposition of the civil penalty;  
9           requiring a report by additional entities; amending s.  
10          556.116, F.S.; providing that certain incident reports  
11          must be submitted to, and investigated by, the State  
12          Fire Marshal, local fire chief, local or state law  
13          enforcement officer, government code inspector, or  
14          code enforcement officer; authorizing the State Fire  
15          Marshal, local fire chief, or any local or state law  
16          enforcement officer, government code inspector, or  
17          code enforcement officer to issue citations and civil  
18          penalties; providing for disposition of the civil  
19          penalty; removing provisions relating to hearings by  
20          the Division of Administrative Hearings of certain  
21          incidents; creating s. 556.117, F.S.; creating an  
22          underground facility damage prevention review panel;  
23          providing duties and membership of the review panel;  
24          specifying the term limits of the review panel;  
25          requiring the State Fire Marshal to provide support to

26 | the review panel; providing that members of the panel  
 27 | serve without reimbursement or compensation; providing  
 28 | an effective date.

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

32 | Section 1. Section 556.107, Florida Statutes, is amended  
 33 | to read:

34 | 556.107 Violations.—

35 | (1) NONCRIMINAL INFRACTIONS.—

36 | (a) 1. Violations of the following provisions are  
 37 | noncriminal infractions:

38 | ~~a.1.~~ Section 556.105(1), relating to providing required  
 39 | information.

40 | ~~b.2.~~ Section 556.105(6), relating to the avoidance of  
 41 | excavation.

42 | ~~c.3.~~ Section 556.105(11), relating to the need to stop  
 43 | excavation or demolition because marks are no longer visible,  
 44 | or, in the case of underwater facilities, are inadequately  
 45 | documented.

46 | ~~d.4.~~ Section 556.105(12), relating to the need to cease  
 47 | excavation or demolition activities because of contact or damage  
 48 | to an underground facility.

49 | ~~e.5.~~ Section 556.105(5) (a) and (b), relating to  
 50 | identification of underground facilities, if a member operator

51 does not mark an underground facility, but not if a member  
52 operator marks an underground facility incorrectly.

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

55 ~~g.7.~~ Section 556.114(1), (2), (3), and (4), relating to a  
56 failure to follow low-impact marking practices, as defined  
57 therein.

58 2. Violations of the following provisions when related to  
59 an underground pipe or other underground facility transporting  
60 hazardous materials that are regulated by the Pipeline and  
61 Hazardous Materials Safety Administration of the United States  
62 Department of Transportation are noncriminal infractions,  
63 subject to enhanced civil penalties under paragraph (c):

64 a. Section 556.105(1), relating to providing required  
65 information.

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

68 c. Section 556.105(6), relating to the avoidance of  
69 certain excavation.

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

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

76 (b) Any excavator or member operator who commits a  
 77 noncriminal infraction under paragraph (a) may be issued a  
 78 citation by the State Fire Marshal; the fire chief of the  
 79 special district, municipality, or county; or any local or state  
 80 law enforcement officer, government code inspector, or code  
 81 enforcement officer, and the issuer of a citation may require an  
 82 excavator to cease work on any excavation or not start a  
 83 proposed excavation until there has been compliance with the  
 84 provisions of this chapter. Citations shall be hand delivered to  
 85 any employee of the excavator or member operator who is involved  
 86 in the noncriminal infraction. The citation shall be issued in  
 87 the name of the excavator ~~or member operator, whichever is~~  
 88 ~~applicable.~~

89 (c)1. Any excavator or member operator who commits a  
 90 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~  
 91 may be required to pay a civil penalty of \$500 plus court costs  
 92 ~~for each infraction, which is \$500 plus court costs.~~ If a  
 93 citation is issued by the State Fire Marshal; the fire chief of  
 94 the special district, municipality, or county; a state law  
 95 enforcement officer;; a local law enforcement officer;; a local  
 96 government code inspector;; or a code enforcement officer, 80  
 97 percent of the civil penalty collected by the clerk of the court  
 98 shall be distributed to the governmental entity whose employee  
 99 issued the citation and 20 percent of the penalty shall be  
 100 retained by the clerk to cover administrative costs, in addition

101 to other court costs. Any person who fails to properly respond  
102 to a citation issued under ~~pursuant to~~ paragraph (b) shall, in  
103 addition to the citation, be charged with the offense of failing  
104 to respond to the citation and, upon conviction, commits a  
105 misdemeanor of the second degree, punishable as provided in s.  
106 775.082 or s. 775.083. A written warning to this effect must be  
107 provided at the time any citation is issued under ~~pursuant to~~  
108 paragraph (b).

109 2. Any excavator or member operator who commits a  
110 noncriminal infraction under subparagraph (a)2. may be required  
111 to pay an enhanced civil penalty of \$2,500 plus 5 percent in  
112 addition to any other court costs for each infraction. If a  
113 citation is issued by the State Fire Marshal; the fire chief of  
114 the special district, municipality, or county; a state law  
115 enforcement officer; a local law enforcement officer; a local  
116 government code inspector; or a code enforcement officer, 100  
117 percent of the civil penalty collected by the clerk of the court  
118 shall be distributed to the governmental entity whose employee  
119 issued the citation. The additional 5 percent, plus any  
120 additional court costs, is to be retained by the clerk to cover  
121 administrative costs. Any person who fails to properly respond  
122 to a citation issued under paragraph (b) shall, in addition to  
123 the citation, be charged with the offense of failing to respond  
124 to the citation and, upon conviction, commits a misdemeanor of  
125 the second degree, punishable as provided in s. 775.082 or s.

126 | 775.083. A written warning to this effect must be provided at  
 127 | the time a citation is issued under paragraph (b).

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

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

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

151 (g) At a court hearing under this chapter, the commission  
 152 of a charged infraction must be proven by a preponderance of the  
 153 evidence.

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

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

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

174 (3) MISDEMEANORS.—Any person who knowingly and willfully  
 175 removes or otherwise destroys the valid stakes or other valid

176 physical markings described in s. 556.105(5) (a) and (b) used to  
 177 mark the horizontal route of an underground facility commits a  
 178 misdemeanor of the second degree, punishable as provided in s.  
 179 775.082 or s. 775.083. For purposes of this subsection, stakes  
 180 or other nonpermanent physical markings are considered valid for  
 181 30 calendar days after information is provided to the system  
 182 under s. 556.105(1) (a).

183 Section 2. Section 556.116, Florida Statutes, is amended  
 184 to read:

185 556.116 High-priority subsurface installations; special  
 186 procedures.—

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

188 ~~(a) "Division" means the Division of Administrative~~  
 189 ~~Hearings.~~

190 (a) ~~(b)~~ "High-priority subsurface installation" means an  
 191 underground gas transmission or gas distribution pipeline, an  
 192 underground pipeline used to transport gasoline, jet fuel, or  
 193 any other refined petroleum product or hazardous or highly  
 194 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
 195 the pipeline is deemed to be critical by the operator of the  
 196 pipeline and is identified as a high-priority subsurface  
 197 installation to an excavator who has provided a notice of intent  
 198 to excavate under ~~pursuant to~~ s. 556.105(1), or would have been  
 199 identified as a high-priority subsurface installation except for  
 200 the excavator's failure to give proper notice of intent to



201 excavate.

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

206 1. Results in death or serious bodily injury requiring  
207 inpatient hospitalization.

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

211 (2) When an excavator proposes to excavate or demolish  
212 within 15 feet of the horizontal route of an underground  
213 facility that has been identified as a high-priority subsurface  
214 installation by the operator of the facility, the operator  
215 shall, in addition to identifying the horizontal route of its  
216 facility as set forth in s. 556.105(5)(a) and (b), and within  
217 the time period set forth in s. 556.105(9)(a) for a positive  
218 response, notify the excavator that the facility is a high-  
219 priority subsurface installation. If the member operator  
220 provides such timely notice of the existence of a high-priority  
221 subsurface installation, an excavator shall notify the operator  
222 of the planned excavation start date and time before beginning  
223 excavation. If the member operator does not provide timely  
224 notice, the excavator may proceed, after waiting the prescribed  
225 time period set forth in s. 556.105(9)(a), to excavate without

226 notifying the member operator of the excavation start date and  
227 time. The exemptions stated in s. 556.108 apply to the  
228 notification requirements in this subsection.

229 (3) (a) An alleged commission of an infraction listed in s.  
230 556.107(1) which results in an incident must be reported to the  
231 system by a member operator or an excavator within 24 hours  
232 after learning of the alleged occurrence of an incident.

233 (b) Upon receipt of an allegation that an incident has  
234 occurred, the system shall transmit an incident report to the  
235 State Fire Marshal; the fire chief of the special district,  
236 municipality, or county; a local or state law enforcement  
237 officer; a government code inspector; or a code enforcement  
238 officer in order to ~~division and contract with the division so~~  
239 ~~that the division may~~ conduct an investigation ~~a hearing~~ to  
240 determine whether an incident has occurred, and, if so, whether  
241 a violation of s. 556.107(1) (a) was a proximate cause of the  
242 incident. ~~The contract for services to be performed by the~~  
243 ~~division must include provisions for the system to reimburse the~~  
244 ~~division for any costs incurred by the division for court~~  
245 ~~reporters, transcript preparation, travel, facility rental, and~~  
246 ~~other customary hearing costs, in the manner set forth in s.~~  
247 ~~120.65(9).~~

248 (c) The State Fire Marshal; the fire chief of the special  
249 district, municipality, or county; a local or state law  
250 enforcement officer; a government code inspector; or a code

251 ~~enforcement officer division has jurisdiction in a proceeding~~  
252 ~~under this section to determine the facts and law concerning an~~  
253 ~~alleged incident. The division may issue a citation and impose a~~  
254 ~~civil penalty ~~fine~~ against a violator in an amount not to exceed~~  
255 ~~\$50,000 if the person violated a provision of s. 556.107(1) (a)~~  
256 ~~and that violation was a proximate cause of the incident.~~  
257 ~~However, if a state agency or political subdivision caused the~~  
258 ~~incident, the state agency or political subdivision may not be~~  
259 ~~fined in an amount in excess of \$10,000.~~

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

263 (e) If a civil penalty is imposed by the State Fire  
264 Marshal; the fire chief of the special district, municipality,  
265 or county; a local or state law enforcement officer; a  
266 government code inspector; or a code enforcement officer under  
267 this subsection, 95 percent of the civil penalty collected by  
268 the clerk of the court shall be distributed to the governmental  
269 entity whose employee issued the citation and civil penalty and  
270 5 percent of the civil penalty shall be retained by the clerk to  
271 cover administrative costs ~~A fine against an excavator or a~~  
272 ~~member operator imposed under this subsection shall be paid to~~  
273 ~~the system, which shall use the collected fines to satisfy the~~  
274 ~~costs incurred by the system for any proceedings under this~~  
275 ~~section. To the extent there are any funds remaining, the system~~

276 ~~may use the funds exclusively for damage-prevention education.~~

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

281 ~~(4)(a) The division shall issue and serve on all original~~  
282 ~~parties an initial order that assigns the case to a specific~~  
283 ~~administrative law judge and requests information regarding~~  
284 ~~scheduling the final hearing within 5 business days after the~~  
285 ~~division receives a petition or request for hearing. The~~  
286 ~~original parties in the proceeding include all excavators and~~  
287 ~~member operators identified by the system as being involved in~~  
288 ~~the alleged incident. The final hearing must be conducted within~~  
289 ~~60 days after the date the petition or the request for a hearing~~  
290 ~~is filed with the division.~~

291 ~~(b) Unless the parties otherwise agree, venue for the~~  
292 ~~hearing shall be in the county in which the underground facility~~  
293 ~~is located.~~

294 ~~(c) An intervenor in the proceeding must file a petition~~  
295 ~~to intervene no later than 15 days before the final hearing. A~~  
296 ~~person who has a substantial interest in the proceeding may~~  
297 ~~intervene.~~

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

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

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

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

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

308           ~~(b) All parties shall attend a prehearing conference for~~  
309 ~~the purpose of identifying the legal and factual issues to be~~  
310 ~~considered at the final hearing, the names and addresses of~~  
311 ~~witnesses who may be called to testify at the final hearing,~~  
312 ~~documentary evidence that will be offered at the final hearing,~~  
313 ~~the range of penalties that may be imposed, and any other matter~~  
314 ~~that would expedite resolution of the proceeding. The prehearing~~  
315 ~~conference may be held by telephone conference call.~~

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

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

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

325           ~~1. All notices, pleadings, motions, and intermediate~~

326 ~~rulings.~~

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

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

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

330       ~~5. Matters placed on the record after an ex parte~~

331 ~~communication.~~

332       ~~6. The written final order of the administrative law judge~~

333 ~~presiding at the final hearing.~~

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

335       ~~(f) The division shall accurately and completely preserve~~

336 ~~all testimony in the proceeding and, upon request by any party,~~

337 ~~shall make a full or partial transcript available at no more~~

338 ~~than actual cost.~~

339       ~~(g) The administrative law judge shall issue a final order~~

340 ~~within 30 days after the final hearing or the filing of the~~

341 ~~transcript thereof, whichever is later. The final order of the~~

342 ~~administrative law judge must include:~~

343             ~~1. Findings of fact based exclusively on the evidence of~~

344 ~~record and matters officially recognized.~~

345             ~~2. Conclusions of law. In determining whether a party has~~

346 ~~committed an infraction of s. 556.107(1)(a), and whether the~~

347 ~~infraction was a proximate cause of an incident, the commission~~

348 ~~of an infraction must be proven by a preponderance of the~~

349 ~~evidence.~~

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

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

353  
354 ~~The final order of the administrative law judge constitutes~~  
355 ~~final agency action subject to judicial review pursuant to s.~~  
356 ~~120.68.~~

357 Section 3. Section 556.117, Florida Statutes, is created  
358 to read:

359 556.117 Underground facility damage prevention review  
360 panel.—

361 (1) The underground facility damage prevention review  
362 panel is established under the Division of State Fire Marshal  
363 within the Department of Financial Services to review complaints  
364 of an alleged violation under this chapter to identify issues or  
365 potential issues with damage prevention and enforcement. The  
366 review panel shall identify areas in the state where additional  
367 education related to damage prevention and enforcement is needed  
368 and shall recommend solutions to remedy issues related to damage  
369 prevention and enforcement. The review panel shall also review  
370 current practices for locating underground pipes or other  
371 underground facilities that transport hazardous materials which  
372 are regulated by the Pipeline and Hazardous Materials Safety  
373 Administration of the United States Department of Transportation  
374 in the state and determine if any statutory changes are needed  
375 to make such pipelines or facilities more resilient and safer

376 for communities. Except as otherwise provided in this section,  
377 the review panel shall operate in a manner consistent with s.  
378 20.052.

379 (2) The review panel shall consist of nine members  
380 appointed by the State Fire Marshal and shall include the  
381 following:

382 (a) One member representing the electrical utility  
383 industry.

384 (b) One member representing the telecommunications  
385 industry.

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

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

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

391 (f) One member representing county or municipal water and  
392 sewer service providers.

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

396 (h) One member licensed as an underground utility and  
397 excavation contractor under chapter 489 and engaged in work for  
398 public utilities.

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

400 (3) The board of directors shall establish a process to



401 receive applications for the purpose of appointing members to  
402 the review panel.

403 (4) Each member shall serve for a 2-year term. A member  
404 may not serve more than two consecutive 2-year terms, except  
405 that members listed in paragraphs (2)(a)-(e) shall initially  
406 serve a 1-year term and those members listed in paragraphs  
407 (2)(f)-(i) shall serve a 2-year term. All subsequent  
408 appointments shall be for 2-year terms. A vacancy for an  
409 unexpired term of a member shall be filled in the same manner as  
410 the original appointment. The review panel shall elect from  
411 among its members a chair and vice chair and meet quarterly in  
412 conjunction with the meeting of the board of directors or at the  
413 call of the chair.

414 (5) The Division of State Fire Marshal shall provide staff  
415 support and meeting space to the review panel. Members of the  
416 panel shall serve without compensation and are not entitled to  
417 reimbursement for per diem or travel expenses.

418 Section 4. This act shall take effect July 1, 2020.