

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 1464

INTRODUCER: Rules Committee; Banking and Insurance Committee; Infrastructure and Security Committee; and Senator Flores

SUBJECT: Underground Facility Damage Prevention and Safety

DATE: February 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Price</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1464 amends provisions of law relating to the Underground Facility Damage Prevention and Safety Act, which is intended to identify and locate underground facilities, examples of which include pipes, pipelines, and cables, prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damages to those facilities. Specifically, the bill:

- Expands the list of entities that may issue citations for existing and new enhanced-penalty violations of ch. 556, F.S., to include the State Fire Marshal or his or her statutorily defined agents, and the fire chiefs of special districts, municipalities, and counties; and provides criminal penalties for willful failure to respond to a citation.
- Increases the maximum civil penalty (up to \$2,500, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S.D.O.T. Pipeline and Hazardous Material Safety Administration (PHMSA). Eighty percent of the civil penalty will be distributed to the entity that issued the citation, and the remaining 20 percent will be retained by the clerk, in addition to any court costs.
- Requires each clerk of court to submit an annual report to the State Fire Marshal listing each violation notice written under ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Provides a criminal penalty for knowingly and willfully removing or damaging a permanent marker.

- Requires member operators and excavators to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by the State Fire Marshal, who replaces the Division of Administrative Hearings as the investigative authority. The State Fire Marshal may also issue a citation and impose a civil penalty for a violation of ch. 556, F.S., and 95 percent of any civil penalty imposed will be equally distributed between the Sunshine 811 system and the State Fire Marshal for specified uses. The remaining 5 percent is retained by the clerk of court to cover administrative costs.
- Requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to submit an analysis of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives on an annual basis.

The bill may have an indeterminate positive impact on state and local revenues. See the Fiscal Impact Statement for additional details.

The bill takes effect on July 1, 2020.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The stated purpose of the chapter is aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility¹, e.g., a pipeline or cable, caused by excavation or demolition operations.² The Act created Sunshine State One-Call of Florida, Inc. (Sunshine 811), a not-for-profit corporation intended to provide access for excavating contractors and the public to provide notification of their intent to engage in excavation or demolition.³ Sunshine 811 is intended to provide member operators⁴ an opportunity to identify and locate their underground facilities. All operators of underground facilities in the state are required to be member operators, and are required to use and participate in the system.⁵

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

² Section 556.101(3), F.S.

³ See ss. 556.101(2) and 556.103, F.S.

⁴ Defined in s. 556.102(8), F.S., to mean “any person who furnishes or transports materials or services by means of an underground facility.”

⁵ Section 556.103(1), F.S.

Sunshine 811 is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁶ Excavators intending to conduct excavation or demolition must notify the system not less than 2 full business days before beginning operations that are not beneath the waters of the state, and not less than 10 full business days if the operation is beneath the waters of the state, with certain exceptions.⁷ The person must also provide specified identification, location, and operational information, which remains valid for 30 calendar days.⁸ Each notification is recorded to document compliance with the Act.⁹

Upon receipt of this notice, the system provides the notifying excavator with a list of the member operators who will be advised of the notification, along with a notification number to be provided to law enforcement upon request.¹⁰ The system in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹¹ Within 2 full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹²

An excavator is required to delay excavations until the first of the following events occurs:

- Each member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- Expiration of the time allowed for markings.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹³

Violations of certain provisions of the Act are noncriminal infractions enforceable by citations issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. Such infractions may result in a civil penalty of \$500, plus court costs.¹⁴ Eighty percent of

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. Member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities. Section 556.105(5), F.S.

⁸ Section 556.105(1)(a)-(d), F.S.

⁹ Section 556.105(2), F.S.

¹⁰ Section 556.105(3) and (4), F.S.

¹¹ Section 556.105(5), F.S.

¹² *Id.*

¹³ Section 556.105(6), F.S.

¹⁴ Section 556.107(1)(a), F.S.

the civil penalty is distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁵

High Priority Subservice Installations

In 2010, the Legislature established a special process to address damages to any facility identified as a “high-priority subsurface installation.”¹⁶ High-priority subsurface installations are defined as “an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid” that the pipeline’s operator has identified as critical.¹⁷ If an alleged violation of a required procedure involves damage to a high-priority subsurface installation and the damage results in death or serious bodily injury, or results in property damage, including service-restoration costs, of more than \$50,000, or interruption of service to at least 2,500 customers, the incident must be reported to Sunshine 811 by the excavator or member operator within 24 hours.¹⁸ Sunshine 811 must then transmit an incident report to the Division of Administrative Hearings (DOAH) for a hearing to determine whether a violation of required procedure was the proximate cause of the incident. If DOAH finds that a violation was the proximate cause of the incident, it may impose a fine not to exceed \$50,000 (or \$10,000 if a state agency or political subdivision caused the incident).¹⁹ Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs related to DOAH’s services, and any remaining funds may be used only for damage-prevention education.²⁰

Reporting Requirements and Results

By March 31 of each year, each clerk of court must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which was filed in that county during the preceding calendar year.²¹ The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.²² The Sunshine 811 board must submit an annual progress report to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.²³ This report must include a summary of the reports provided by the clerks of court, a summary of damage data reported to the system for the prior year, and any analysis of this data by the board.²⁴

In 2017, the Legislature established additional reporting requirements. First, an excavator must immediately call 911 to report any contact with or damage to an underground facility that results in the escape of natural gas or other hazardous substance or material regulated by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Material Safety Administration

¹⁵ Section 556.107(1)(c), F.S.

¹⁶ Ch. 2010-100, L.O.F., s. 10.

¹⁷ Section 556.116(1)(b), F.S.

¹⁸ Section 556.116, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 556.107(2), F.S.

²² *Id.*

²³ Section 556.103(5), F.S.

²⁴ *Id.*

(PHMSA). Second, if an event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.²⁵

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage incidents were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.²⁶ These citations resulted in \$6,602.50 of fines being levied. Further, the Annual Report identifies one case referred to DOAH involving damage to a natural gas distribution main. In that case, DOAH found that the excavator's failure to notify Sunshine 811 prior to excavation was the proximate cause of the incident and imposed a \$5,000 fine.²⁷

U.S.D.O.T. Pipeline and Hazardous Material Safety Administration – Pipeline Damage Prevention Programs

The United States Department of Transportation has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.²⁸

On July 13, 2015, the Pipeline and Hazardous Material Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²⁹

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

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?
- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

²⁵ Ch. 2017-102, L.O.F.

²⁶ Sunshine 811, *2018-19 Annual Report*, available at https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19_annualrpt.pdf (last visited Feb. 8, 2020).

²⁷ *Id.*

²⁸ 49 U.S.C. s. 60114.

²⁹ Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Parts 196 and 198).

- At a minimum, do the state’s excavation damage prevention requirements include the following:
 - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
 - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
 - An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
 - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
 - PHMSA will make the written justifications available to the public.³⁰

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.³¹ States that fail to establish an adequate enforcement program within 5 years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.³²

Duties of State Fire Marshal

Florida’s Chief Financial Officer is designated by law as the State Fire Marshal.³³ The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.³⁴ It is also charged with enforcing laws related to: the prevention of fire and explosion through the regulation of conditions which could lead to fire and explosion; installation and maintenance of fire alarm systems and fire protection systems; the maintenance of fire cause and loss records; and suppression of arson and the investigation of the cause, origin, and circumstances of fire.³⁵ The State Fire Marshal operates as a division of the Department of Financial Services. It operates through an Office of the Director and two bureaus: the Bureau of Fire Prevention and the Bureau of Firefighter Standards and Training.³⁶ The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies fire service members that meet standards. The Bureau of Fire Prevention conducts fire/life safety inspections and reviews construction plans for all state-owned buildings, regulates the fireworks and fire sprinkler industries, inspects and licenses boilers, and certifies

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 633.104(1), F.S.

³⁴ Section 633.104(2), F.S.

³⁵ *Id.*

³⁶ Chief Financial Officer, *Division of State Fire Marshal*, <https://www.myfloridacfo.com/Division/SFM/> (last visited Feb. 8, 2020).

fire suppression industry workers. It has six field offices and three satellite offices around the state.³⁷

Florida law provides investigatory authority for the State Fire Marshal. Upon request, the State Fire Marshall must investigate the cause, origin, and circumstances of fires and explosions where property has been damaged or destroyed and there is probable cause to believe that the fire or explosion was the result of carelessness or design. If the fire or explosion occurs in a municipality, county, or special district with an organized fire department, the local fire official must provide for an initial investigation before requesting an investigation by the State Fire Marshal. In an investigation, the State Fire Marshal may require testimony under oath from persons believed to be aware of any facts related to matters under investigation.³⁸

If the State Fire Marshal believes that there is sufficient evidence to charge a person with an offense, he or she must cause the person to be arrested and must provide the appropriate prosecuting office with all pertinent information collected. The State Fire Marshal may compel the testimony of witnesses and the production of pertinent documents and may seize personal property to be held for evidence. The State Fire Marshal may designate an agent for the purpose of conducting an investigation, and the agent may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require the attendance and testimony of witnesses and the production of documents or other evidence material to the investigation. The State Fire Marshal must keep a record of all fires and explosions investigated under its authority.³⁹

The State Fire Marshal is authorized to appoint such agents as may be necessary to effectively carry out the requirements of ch. 633, F.S.⁴⁰ Agents of the State Fire Marshal have the same authority to serve summonses, make arrests, carry firearms, and make searches and seizures, as the sheriff or her or his deputies in the respective counties.⁴¹ Further, the chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers may enforce ch. 633, F.S., and all State Fire Marshal rules.⁴²

III. Effect of Proposed Changes:

Expanded Enforcement Authority and Increased Penalties

Permanent Markers

Section 1 of the bill amends s. 556.102, F.S., to define the terms “permanent marker” for purposes of the Underground Facility Damage Prevention and Safety Act. Permanent markers are clearly visible indications of the approximate location of underground facilities (examples include pipes and

³⁷ *Id.*

³⁸ Section 633.112, F.S.

³⁹ *Id.*

⁴⁰ Section 633.114, F.S.

⁴¹ Section 633.116, F.S.

⁴² Section 633.118, F.S. However, personnel, other than county, city or special district fire chiefs, are agents of their respective jurisdictions, not agents of the State Fire Marshal.

cables). Permanent markers are made of durable material that is reasonably expected to remain in position for the life of the underground facility.

Section 2 amends s. 556.107, F.S., to establish a criminal penalty for any person convicted of knowingly and willfully removing or damaging a “permanent marker” that has been placed to identify the approximate location of an underground facility. A violation is a second-degree misdemeanor, punishable by a term of imprisonment not exceeding 60 days and up to a \$500 fine.

Non-criminal Infractions

Section 2 of the bill amends s. 556.107, F.S., relating to noncriminal infractions for violations of certain provisions of the Act.

The bill makes violations of s. 556.105(5)(c), F.S., relating to excavation practices in tolerance zones, a noncriminal infraction.

The bill expands the list of entities that may issue citations for violations of s. 556.107, F.S. In addition to the existing authorized citation issuers, the bill authorizes the State Fire Marshal or its statutorily-defined agents under ss. 633.114⁴³ and 633.116, F.S.⁴⁴, and the fire chief of the special district, municipality, or county in which an infraction happened to issue such citations.

The bill increases civil penalties from \$500 to up to \$2,500 (plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., which involve an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Specifically, the following violations are subject to this enhanced civil penalty:

- Failure by an excavator to comply with s. 556.105(1), F.S., which requires an excavator to provide notice and certain information to the Sunshine 811 system within specified timeframes prior to beginning excavation of demolition work.
- Failure by an excavator to comply with s. 556.105(5)(c), F.S., which requires an excavator to use increased caution when working within a tolerance zone,⁴⁵ such as hand digging, pot holing, soft digging, vacuum methods, or other similar procedures.
- Failure by an excavator to comply with s. 556.105(6), F.S., which requires an excavator to avoid excavation in an area until whichever of the following occurs first: each member operator’s underground facilities have been located and marked; the excavator has been notified that no member operator has underground facilities in the area; or the time allowed for markings has expired.
- Failure by an excavator to comply with s. 556.106(11), F.S., which requires an excavator to stop excavation and demolition activities in the vicinity of an underground facility and notify the Sunshine 811 system if the marking for the facility is removed, no longer visible, or inadequately documented.
- Failure by an excavator to comply with s. 556.105(12), F.S., which requires an excavator to immediately notify the appropriate member operator if the excavator causes contact with or

⁴³ Authorizing the State Fire Marshal to appoint such agents as may be necessary to effectively carry out ch. 633, F.S.

⁴⁴ Granting agents of the State Fire Marshal the same authority to serve summonses, make arrests, carry firearms, and make searches and seizures, as the sheriff or her or his deputies in the respective counties.

⁴⁵ “Tolerance zone” means “24 inches from the outer edge of either side of the exterior surface of a marked underground facility.” Section 556.102(12), F.S.

damage to a pipe and to immediately call 911 to report contact or damage that causes the escape of any natural gas or other hazardous substance or material regulated by PHMSA.

If the clerk of court collects a civil penalty for one of these violations, the bill provides that 80 percent of the civil penalty will be distributed to the entity that issued the citation. The additional 20 percent, plus any additional court costs, is retained by the clerk. The bill provides that a person who willfully fails to properly respond to a citation issued for one of these violations will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and up to a \$500 fine.⁴⁶ The bill requires a written warning to this effect be provided at the time the citation is issued.⁴⁷

In the event a person elects to have a hearing on the commission of an infraction, the bill provides that the applicable penalty may not exceed the applicable civil penalty for each infraction, and allows a person to appeal the amount of civil penalties imposed.

Payment of Civil Penalties

Section 556.116(2)(c), F.S., authorizes the State Fire Marshal, or its agents, to issue citations and impose civil penalties⁴⁸ for violations of 556.107(1)(a), F.S., that were the proximate cause of an incident. The bill allows persons cited for infractions relating to high-priority subsurface installations under s. 556.116(2)(c), F.S., to post a bond equal to the sum of the penalty and court costs, and to pay the penalty plus court costs by mail or in person within 30 days of receiving the citation. Payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.

Additional Reporting Requirements

Under current law, each clerk of court, by March 31 of each year, must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year. The report states the name and address of the member or excavator who committed each infraction and indicates whether or not the civil penalty for the infraction was paid. **Section 2** of the bill contains three new reporting requirements:

- A clerk of court must submit the report to the State Fire Marshal as well.
- The report must also list each citation issued for violations of s. 556.116(2)(c), F.S., relating to high-priority subsurface installations.
- The report must also indicate the enforcement authority, specific statutory infraction, and the type of underground facility related to the infraction.

⁴⁶ Sections 775.082 and 775.083, F.S.

⁴⁷ Currently, if a person is found to have committed an infraction by a judge or hearing official, the person may appeal that finding to the circuit court. The bill also authorizes appeal to the circuit court of the amount of the civil penalties imposed.

⁴⁸ As noted, the penalty may not exceed \$50,000, unless the violator is a state agency or political subdivision, in which case the penalty may not exceed \$10,000. Section 556.116(2)(c), F.S.

Investigation of Incidents Involving High-Priority Subsurface Installations

Section 1 of the bill relocates the definitions of “high-priority subsurface installation” and “incident” from s. 556.116, F.S., which specifically governs high priority subsurface installations, to s. 556.102, F.S., which provides definitions for ch. 556, F.S., governing underground facility damage prevention and safety, as a whole.

Section 3 of the bill amends s. 556.116, F.S., relating to high-priority subsurface installations.

For incidents involving high-priority subsurface installations, the bill requires member operators or excavators to report the incident to the Sunshine 811 system *and* the State Fire Marshal within 24 hours after learning of the incident. Then, the State Fire Marshal, or a statutorily defined agent under ss. 633.114,⁴⁹ 633.116,⁵⁰ and 633.118 F.S.,⁵¹ if authorized by the State Fire Marshal, is required to conduct an investigation of the incident to determine whether the incident occurred, and whether a violation of s. 556.107(a), F.S., was the proximate cause of the incident. The State Fire Marshal or its agents may issue citations and impose civil penalties associated with such incidents, in addition to any other civil penalty related to the incident.

Five percent of any additional civil penalty must be retained by the clerk to cover administrative costs, and the remainder must be distributed equally between the Sunshine 811 system and the State Fire Marshal. The portion distributed to the 811 system must be used exclusively to fund damage-prevention education. The State Fire Marshal portion must be used exclusively to fund programs within the State Fire Marshal’s office that provide need-based financial assistance to help fire departments, including volunteer fire departments, procure equipment, supplies, and educational training designed to mitigate firefighter exposure to cancer-causing chemicals.

These provisions replace the requirement in current law that DOAH conduct investigations of incidents involving high-priority subsurface installations. The bill removes all provisions of current law that establish the procedural requirements for DOAH review of such incidents.

The bill requires that excavators or member operators who commit non-criminal infractions regarding the transmission of an incident report to the State Fire Marshal be provided a written warning at the time the citation is issued stating that willful failure to respond to the citation may result in criminal penalties; conviction results in a misdemeanor of the second degree.

Underground Facility Damage Prevention Review

Section 4 of the bill creates s. 556.117, F.S., which requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of

⁴⁹ *Supra* note 43.

⁵⁰ *Supra* note 44.

⁵¹ Authorizing the chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers to enforce ch. 633, F.S., and all State Fire Marshal rules. However, such personnel are agents of their respective jurisdictions, not agents of the State Fire Marshal. Thus, the reference to State Fire Marshal “agents as provided in 633.114 and 633.116 [and] the fire chief of the special district, municipality, or county” in section 1 of the bill appears to have the same meaning as the references to State Fire Marshal “agents as provided in ss. 633.114, 633.116, and 633.118” in section 3.

alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to identify areas of the state needing additional education related to damage prevention and enforcement, and to recommend solutions to remedy issues found. Each year, by the first of October, Sunshine State One-Call of Florida, Inc. must submit an analysis of its reviews and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Effective Date

Section 5 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may encourage increased enforcement of ch. 556, F.S. Increased enforcement will result in additional fines imposed on persons who violate certain provisions of ch. 556, F.S. As a result, increased enforcement may deter behaviors that cause damages to property, utility service outages, and serious bodily injury.

C. Government Sector Impact:

The bill may have an indeterminate positive impact on local government revenues, as it authorizes fire chiefs to issue citations for the specified violations. The bill also increases

the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. The extent of any increase in revenues, however, is indeterminate, as the result will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs.

The bill may require the expenditure of resources by the State Fire Marshal to investigate alleged high-priority subsurface installation incidents. Again, however, the extent of any increase is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 556.102, 556.107, and 556.116.

This bill creates section 556.117 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 26, 2020:

The committee substitute revises the distribution and authorized uses of civil penalties collected for violations involving high-priority subsurface installations and makes technical and conforming changes.

CS/CS by Banking and Insurance on February 11, 2020:

The committee substitute:

- Relocates definitions;
- Makes violations relating to excavation practices in tolerance zones a noncriminal infraction;
- Gives the State Fire Marshal sole investigative authority over alleged incidents involving high-priority subsurface installations, and to issue citations and impose civil penalties for violations found to be the proximate cause of such an incident. Allows the State Fire Marshal to delegate its duties to statutorily defined agents;
- Allows persons cited for infractions related to high-priority subsurface installations to post a bond equal to the sum of the civil penalties and court costs, and to pay the penalties and court costs by mail or in person. Provides that payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.

- Alters the distribution of civil penalty monies;
- Removes the requirements regarding the underground facility damage prevention review panel and its membership, and, in its place, charges Sunshine State One-Call of Florida, Inc. with reviewing clerk reports of violations and complaints of alleged violations, and identifying issues and potential issues with damage prevention and enforcement.
- Sunshine State One-Call of Florida, Inc., unlike the panel, is required to submit an analysis of these reviews, by October 1 of each year, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

CS by Infrastructure and Security on January 27, 2020:

The committee substitute:

- Clarifies that special district, municipal, and county fire chiefs may issue citations for existing and enhanced-penalty violations of the Damage Prevention Act and that failure to respond to a citation must be willful; and adds a civil penalty for knowingly and willfully removing or damaging a permanent marker.
- Replaces Sunshine One-Call with the State Fire Marshal as the entity appointing members to the panel created to review complaints of alleged violations, identify issues, and recommend needed legislation; and adds a member representing the cable industry as a potential panel member. Provides panel members serve without compensation and are not entitled to per diem or travel expenses.
- Under the bill, the State Fire Marshal will be appointing the members of the Underground Facility Damage Prevention Review Panel and creating a process for accepting applications for membership on the Review Panel.

B. Amendments:

None.