

By the Committees on Rules; Banking and Insurance; and
Infrastructure and Security; and Senator Flores

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1 A bill to be entitled
2 An act relating to underground facility damage
3 prevention and safety; amending s. 556.102, F.S.;
4 providing definitions; amending s. 556.107, F.S.;
5 revising and providing noncriminal violations relating
6 to the transportation of certain hazardous materials;
7 authorizing the State Fire Marshal or his or her
8 agents or the fire chief of the special district,
9 municipality, or county to issue certain citations;
10 providing enhanced civil penalties; providing
11 disposition of the civil penalties; requiring a report
12 to be submitted to an additional entity; providing
13 requirements for the report; providing civil and
14 criminal penalties; amending s. 556.116, F.S.;
15 deleting definitions; requiring certain persons to
16 transmit an incident report to the State Fire Marshal;
17 providing that certain incident reports must be
18 investigated by the State Fire Marshal or his or her
19 agents; authorizing the State Fire Marshal or his or
20 her agents to issue citations and impose civil
21 penalties; providing for disposition of the civil
22 penalty; requiring written warnings for certain
23 noncriminal infractions; providing for an enhanced
24 penalty upon conviction for a failure to respond;
25 deleting provisions relating to hearings by the
26 Division of Administrative Hearings of certain
27 incidents; creating s. 556.117, F.S.; requiring
28 Sunshine State One-Call of Florida, Inc., to review
29 certain reports and complaints; requiring the

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30 corporation to identify areas in the state in need of
31 additional education and to recommend solutions;
32 requiring the corporation to submit an annual report
33 to the Governor and the Legislature by a specified
34 date; providing an effective date.
35

36 Be It Enacted by the Legislature of the State of Florida:
37

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

43 556.102 Definitions.—As used in this act:

44 (8) "High-priority subsurface installation" means an
45 underground gas transmission or gas distribution pipeline, or an
46 underground pipeline used to transport gasoline, jet fuel, or
47 any other refined petroleum product or hazardous or highly
48 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
49 the pipeline is deemed to be critical by the operator of the
50 pipeline and is identified as a high-priority subsurface
51 installation to an excavator who has provided a notice of intent
52 to excavate under s. 556.105(1), or would have been identified
53 as a high-priority subsurface installation except for the
54 excavator's failure to give proper notice of intent to excavate.

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

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59 (a) Results in death or serious bodily injury requiring
60 inpatient hospitalization.

61 (b) Results in property damage, including service-
62 restoration costs, in an amount in excess of \$50,000 or an
63 interruption of service to 2,500 or more customers.

64 (11) "Permanent marker" means a clearly visible indication
65 of the approximate location of an underground facility which is
66 made of material that is durable in nature and which is
67 reasonably expected to remain in position for the life of the
68 underground facility.

69 Section 2. Section 556.107, Florida Statutes, is amended to
70 read:

71 556.107 Violations.—

72 (1) NONCRIMINAL INFRACTIONS.—

73 (a) 1. Violations of the following provisions are
74 noncriminal infractions:

75 a.1. Section 556.105(1), relating to providing required
76 information.

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

79 c.2. Section 556.105(6), relating to the avoidance of
80 excavation.

81 d.3. Section 556.105(11), relating to the need to stop
82 excavation or demolition because marks are no longer visible,
83 or, in the case of underwater facilities, are inadequately
84 documented.

85 e.4. Section 556.105(12), relating to the need to cease
86 excavation or demolition activities because of contact or damage
87 to an underground facility.

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88 ~~f.5.~~ Section 556.105(5) (a) and (b), relating to
89 identification of underground facilities, if a member operator
90 does not mark an underground facility, but not if a member
91 operator marks an underground facility incorrectly.

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

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

97 2. Violations of the following provisions involving an
98 underground facility transporting hazardous materials that are
99 regulated by the Pipeline and Hazardous Materials Safety
100 Administration of the United States Department of Transportation
101 are noncriminal infractions, subject to enhanced civil penalties
102 under paragraph (c):

103 a. Section 556.105(1), relating to providing required
104 information.

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

107 c. Section 556.105(6), relating to the avoidance of certain
108 excavation.

109 d. Section 556.105(11), relating to the need to stop
110 excavation or demolition because certain marks are removed, no
111 longer visible, or inadequately documented.

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

115 (b) Any excavator or member operator who commits a
116 noncriminal infraction under paragraph (a) may be issued a

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117 citation by the State Fire Marshal or his or her agents as
118 provided in ss. 633.114 and 633.116; the fire chief of the
119 special district, municipality, or county; or any local or state
120 law enforcement officer, government code inspector, or code
121 enforcement officer, and the issuer of a citation may require an
122 excavator to cease work on any excavation or not start a
123 proposed excavation until there has been compliance with the
124 provisions of this chapter. Citations shall be hand delivered to
125 any employee of the excavator or member operator who is involved
126 in the noncriminal infraction. The citation shall be issued in
127 the name of the excavator or member operator, whichever is
128 applicable.

129 (c)1. Any excavator or member operator who commits a
130 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~
131 may be required to pay a civil penalty of \$500 plus court costs
132 ~~for each infraction, which is \$500 plus court costs.~~ If a
133 citation is issued ~~by a state law enforcement officer, a local~~
134 ~~law enforcement officer, a local government code inspector, or a~~
135 ~~code enforcement officer,~~ 80 percent of the civil penalty
136 collected by the clerk of the court must ~~shall~~ be distributed to
137 the governmental entity whose employee issued the citation and
138 20 percent of the penalty must ~~shall~~ be retained by the clerk ~~to~~
139 ~~cover administrative costs,~~ in addition to any other ~~other~~ court
140 costs. ~~Any person who fails to properly respond to a citation~~
141 ~~issued pursuant to paragraph (b) shall, in addition to the~~
142 ~~citation, be charged with the offense of failing to respond to~~
143 ~~the citation and, upon conviction, commits a misdemeanor of the~~
144 ~~second degree, punishable as provided in s. 775.082 or s.~~
145 ~~775.083. A written warning to this effect must be provided at~~

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146 ~~the time any citation is issued pursuant to paragraph (b).~~

147 2. Any excavator or member operator who commits a
148 noncriminal infraction under subparagraph (a)2. may be required
149 to pay an enhanced civil penalty of \$2,500 plus court costs for
150 each infraction. If a citation is issued, 80 percent of the
151 civil penalty collected by the clerk of the court must be
152 distributed to the governmental entity whose employee issued the
153 citation and 20 percent must be retained by the clerk in
154 addition to any court costs.

155 3. Any person who willfully fails to properly respond to a
156 citation issued under paragraph (b) shall, in addition to the
157 citation, be charged with the offense of failing to respond to
158 the citation and, upon conviction, commits a misdemeanor of the
159 second degree, punishable as provided in s. 775.082 or s.
160 775.083. A written warning to this effect must be provided at
161 the time a citation is issued under paragraph (b).

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

166 (e) A person charged with a noncriminal infraction under
167 paragraph (a) or s. 556.116(2)(c) may pay the applicable civil
168 penalty plus the additional court costs, by mail or in person,
169 within 30 days after the date of receiving the citation. If the
170 person cited pays the civil penalty, she or he is deemed to have
171 admitted to committing the infraction and to have waived the
172 right to a hearing on the issue of commission of the infraction.
173 The admission may be used as evidence in any other proceeding
174 under this chapter.

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175 (f) Any person may elect to have a hearing on the
176 commission of the infraction ~~appear~~ before the county court. A
177 person who elects to have a hearing waives ~~and if so electing is~~
178 ~~deemed to have waived~~ the limitations on the civil penalties
179 ~~penalty~~ specified in paragraph (c). The court, after a hearing,
180 shall make a determination as to whether an infraction has been
181 committed. If the commission of an infraction has been proven,
182 the court may impose a ~~civil~~ penalty not to exceed the
183 applicable civil penalty ~~\$5,000~~ plus court costs for each
184 infraction. In determining the amount of the civil penalty, the
185 court may consider previous noncriminal infractions committed.

186 (g) At a court hearing under this chapter, the commission
187 of a charged infraction must be proven by a preponderance of the
188 evidence.

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

193 (i) Sunshine State One-Call of Florida, Inc., may, at its
194 own cost, retain an attorney to assist in the presentation of
195 relevant facts and law in the county court proceeding pertaining
196 to the citation issued under this section. The corporation may
197 also appear in any case appealed to the circuit court if a
198 county court judge finds that an infraction of the chapter was
199 committed. An appellant in the ~~circuit~~ court proceeding shall
200 timely notify the corporation of any appeal under this section.

201 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
202 clerk of court shall submit a report to the State Fire Marshal
203 and Sunshine State One-Call of Florida, Inc., listing each

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204 citation issued for a violation notice written under paragraph
205 (1) (a) and s. 556.116(2) (c) which has been filed in that county
206 during the preceding calendar year. The report must state the
207 name and address of the member or excavator who committed each
208 infraction, the enforcement authority, the specific statutory
209 infraction, and the type of underground facility related to the
210 infraction and must indicate whether or not the civil penalty
211 for the infraction was paid.

212 (3) MISDEMEANORS.—

213 (a) Any person who knowingly and willfully removes or
214 otherwise destroys the valid stakes or other valid physical
215 markings described in s. 556.105(5) (a) and (b) used to mark the
216 horizontal route of an underground facility commits a
217 misdemeanor of the second degree, punishable as provided in s.
218 775.082 or s. 775.083. For purposes of this subsection, stakes
219 or other nonpermanent physical markings are considered valid for
220 30 calendar days after information is provided to the system
221 under s. 556.105(1) (a).

222 (b) Any person who knowingly and willfully removes or
223 damages a permanent marker placed to identify the approximate
224 location of an underground facility commits a misdemeanor of the
225 second degree, punishable as provided in s. 775.082 or s.
226 775.083.

227 Section 3. Section 556.116, Florida Statutes, is amended to
228 read:

229 556.116 High-priority subsurface installations; special
230 procedures.—

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

232 ~~(a) "Division" means the Division of Administrative~~

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233 Hearings.

234 ~~(b) "High-priority subsurface installation" means an~~
235 ~~underground gas transmission or gas distribution pipeline, an~~
236 ~~underground pipeline used to transport gasoline, jet fuel, or~~
237 ~~any other refined petroleum product or hazardous or highly~~
238 ~~volatile liquid, such as anhydrous ammonia or carbon dioxide, if~~
239 ~~the pipeline is deemed to be critical by the operator of the~~
240 ~~pipeline and is identified as a high-priority subsurface~~
241 ~~installation to an excavator who has provided a notice of intent~~
242 ~~to excavate pursuant to s. 556.105(1), or would have been~~
243 ~~identified as a high-priority subsurface installation except for~~
244 ~~the excavator's failure to give proper notice of intent to~~
245 ~~excavate.~~

246 ~~(c) "Incident" means an event that involves damage to a~~
247 ~~high-priority subsurface installation that has been identified~~
248 ~~as such by the operator according to the notification procedures~~
249 ~~set forth in subsection (2) and that:~~

250 ~~1. Results in death or serious bodily injury requiring~~
251 ~~inpatient hospitalization.~~

252 ~~2. Results in property damage, including service-~~
253 ~~restoration costs, in an amount in excess of \$50,000 or~~
254 ~~interruption of service to 2,500 or more customers.~~

255 (1) ~~(2)~~ When an excavator proposes to excavate or demolish
256 within 15 feet of the horizontal route of an underground
257 facility that has been identified as a high-priority subsurface
258 installation by the operator of the facility, the operator
259 shall, in addition to identifying the horizontal route of its
260 facility as set forth in s. 556.105(5) (a) and (b), and within
261 the time period set forth in s. 556.105(9) (a) for a positive

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262 response, notify the excavator that the facility is a high-
263 priority subsurface installation. If the member operator
264 provides such timely notice of the existence of a high-priority
265 subsurface installation, an excavator shall notify the operator
266 of the planned excavation start date and time before beginning
267 excavation. If the member operator does not provide timely
268 notice, the excavator may proceed, after waiting the prescribed
269 time period set forth in s. 556.105(9)(a), to excavate without
270 notifying the member operator of the excavation start date and
271 time. The exemptions stated in s. 556.108 apply to the
272 notification requirements in this subsection.

273 (2)(a) ~~(3)(a)~~ An alleged commission of an infraction listed
274 in s. 556.107(1) which results in an incident must be reported
275 to the system and the State Fire Marshal by a member operator or
276 an excavator within 24 hours after learning of the alleged
277 occurrence of an incident.

278 (b) Upon receipt of an allegation that an incident has
279 occurred, the member operator or excavator ~~system~~ shall transmit
280 an incident report to the State Fire Marshal, who shall ~~division~~
281 ~~and contract with the division so that the division may conduct~~
282 an investigation ~~a hearing~~ to determine whether an incident has
283 occurred, and, if so, whether a violation of s. 556.107(1)(a)
284 was a proximate cause of the incident. The State Fire Marshal
285 may authorize his or her agents as provided in ss. 633.114,
286 633.116, and 633.118 to conduct investigations of incidents ~~The~~
287 ~~contract for services to be performed by the division must~~
288 ~~include provisions for the system to reimburse the division for~~
289 ~~any costs incurred by the division for court reporters,~~
290 ~~transcript preparation, travel, facility rental, and other~~

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291 ~~customary hearing costs, in the manner set forth in s.~~
292 ~~120.65(9).~~

293 (c) The State Fire Marshal or his or her agents as provided
294 in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction~~
295 ~~in a proceeding under this section to determine the facts and~~
296 ~~law concerning an alleged incident. The division may issue a~~
297 citation and impose a civil penalty ~~fine~~ against a violator in
298 an amount not to exceed \$50,000 if the person violated a
299 provision of s. 556.107(1)(a) and that violation was a proximate
300 cause of the incident. However, if a state agency or political
301 subdivision caused the incident, the state agency or political
302 subdivision may not be fined in an amount in excess of \$10,000.

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

306 (e) If an additional civil penalty is imposed by the State
307 Fire Marshal or his or her agents, 5 percent of the civil
308 penalty must be retained by the clerk to cover administrative
309 costs, and the remainder of the civil penalty must be
310 distributed equally between the system and the State Fire
311 Marshal. The portion of the civil penalty distributed to the
312 system must be used exclusively to fund damage-prevention
313 education. The portion of the civil penalty distributed to the
314 State Fire Marshal must be used exclusively to fund programs
315 created within the State Fire Marshal's office that provide
316 need-based financial assistance to help fire departments,
317 including volunteer fire departments, procure equipment,
318 supplies, and educational training designed to mitigate
319 firefighter exposure to hazardous, cancer-causing chemicals ~~A~~

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320 ~~fine against an excavator or a member operator imposed under~~
321 ~~this subsection shall be paid to the system, which shall use the~~
322 ~~collected fines to satisfy the costs incurred by the system for~~
323 ~~any proceedings under this section. To the extent there are any~~
324 ~~funds remaining, the system may use the funds exclusively for~~
325 ~~damage prevention education.~~

326 (f) Any excavator or member operator who commits a
327 noncriminal infraction under s. 556.116(2)(c) must be provided a
328 written warning at the time a citation is issued stating that
329 any person who willfully fails to properly respond to a citation
330 will be charged, in addition to the citation, with the offense
331 of failing to respond to the citation and, if convicted, commits
332 a misdemeanor of the second degree, punishable as provided in s.
333 775.082 or s. 775.083.

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

338 ~~(4)(a) The division shall issue and serve on all original~~
339 ~~parties an initial order that assigns the case to a specific~~
340 ~~administrative law judge and requests information regarding~~
341 ~~scheduling the final hearing within 5 business days after the~~
342 ~~division receives a petition or request for hearing. The~~
343 ~~original parties in the proceeding include all excavators and~~
344 ~~member operators identified by the system as being involved in~~
345 ~~the alleged incident. The final hearing must be conducted within~~
346 ~~60 days after the date the petition or the request for a hearing~~
347 ~~is filed with the division.~~

348 ~~(b) Unless the parties otherwise agree, venue for the~~

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349 ~~hearing shall be in the county in which the underground facility~~
350 ~~is located.~~

351 ~~(c) An intervenor in the proceeding must file a petition to~~
352 ~~intervene no later than 15 days before the final hearing. A~~
353 ~~person who has a substantial interest in the proceeding may~~
354 ~~intervene.~~

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

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

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

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

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

365 ~~(b) All parties shall attend a prehearing conference for~~
366 ~~the purpose of identifying the legal and factual issues to be~~
367 ~~considered at the final hearing, the names and addresses of~~
368 ~~witnesses who may be called to testify at the final hearing,~~
369 ~~documentary evidence that will be offered at the final hearing,~~
370 ~~the range of penalties that may be imposed, and any other matter~~
371 ~~that would expedite resolution of the proceeding. The prehearing~~
372 ~~conference may be held by telephone conference call.~~

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

377 ~~(d) All parties shall have an opportunity to respond, to~~

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378 ~~present evidence and argument on all issues involved, to conduct~~
379 ~~cross-examination and submit rebuttal evidence, and to be~~
380 ~~represented by counsel or other qualified representative.~~

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

382 ~~1. All notices, pleadings, motions, and intermediate~~
383 ~~rulings.~~

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

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

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

387 ~~5. Matters placed on the record after an ex parte~~
388 ~~communication.~~

389 ~~6. The written final order of the administrative law judge~~
390 ~~presiding at the final hearing.~~

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

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

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

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

402 ~~2. Conclusions of law. In determining whether a party has~~
403 ~~committed an infraction of s. 556.107(1) (a), and whether the~~
404 ~~infraction was a proximate cause of an incident, the commission~~
405 ~~of an infraction must be proven by a preponderance of the~~
406 ~~evidence.~~

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

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

410
411 ~~The final order of the administrative law judge constitutes~~
412 ~~final agency action subject to judicial review pursuant to s.~~
413 ~~120.68.~~

414 Section 4. Section 556.117, Florida Statutes, is created to
415 read:

416 556.117 Underground facility damage prevention review.—
417 Sunshine State One-Call of Florida, Inc., shall review the
418 reports submitted by the clerks of court to the State Fire
419 Marshal and any complaints of an alleged violation under this
420 chapter to identify issues or potential issues with damage
421 prevention and enforcement. The corporation shall identify areas
422 in the state where additional education related to damage
423 prevention and enforcement is needed and shall recommend
424 solutions to remedy issues related to damage prevention and
425 enforcement. The corporation shall, by October 1 of each year,
426 submit to the Governor, the President of the Senate, and the
427 Speaker of the House of Representatives an analysis of its
428 reviews and any recommendations for improving underground
429 facility damage prevention and enforcement.

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