



846968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
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	.	

The Committee on Banking and Insurance (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

556.102 Definitions.—As used in this act:



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11 (8) "High-priority subsurface installation" means an
12 underground gas transmission or gas distribution pipeline, or an
13 underground pipeline used to transport gasoline, jet fuel, or
14 any other refined petroleum product or hazardous or highly
15 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
16 the pipeline is deemed to be critical by the operator of the
17 pipeline and is identified as a high-priority subsurface
18 installation to an excavator who has provided a notice of intent
19 to excavate under to s. 556.105(1), or would have been
20 identified as a high-priority subsurface installation except for
21 the excavator's failure to give proper notice of intent to
22 excavate.

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

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

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

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

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

39 556.107 Violations.—



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40 (1) NONCRIMINAL INFRACTIONS.—

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

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

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

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

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

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

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

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

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

65 2. Violations of the following provisions involving an
66 underground facility transporting hazardous materials that are
67 regulated by the Pipeline and Hazardous Materials Safety
68 Administration of the United States Department of Transportation



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69 are noncriminal infractions, subject to enhanced civil penalties
70 under paragraph (c):

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

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

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

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

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

83 (b) Any excavator or member operator who commits a
84 noncriminal infraction under paragraph (a) may be issued a
85 citation by the State Fire Marshal or agents as provided in ss.
86 633.114 and 633.116; the fire chief of the special district,
87 municipality, or county; or any local or state law enforcement
88 officer, government code inspector, or code enforcement officer,
89 and the issuer of a citation may require an excavator to cease
90 work on any excavation or not start a proposed excavation until
91 there has been compliance with the provisions of this chapter.
92 Citations shall be hand delivered to any employee of the
93 excavator or member operator who is involved in the noncriminal
94 infraction. The citation shall be issued in the name of the
95 excavator or member operator, whichever is applicable.

96 (c)1. Any excavator or member operator who commits a
97 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~



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

114 2. Any excavator or member operator who commits a
115 noncriminal infraction under subparagraph (a)2. may be required
116 to pay an enhanced civil penalty of \$2,500 plus court costs for
117 each infraction. If a citation is issued, 80 percent of the
118 civil penalty collected by the clerk of the court must be
119 distributed to the governmental entity whose employee issued the
120 citation and 20 percent must be retained by the clerk in
121 addition to any court costs.

122 3. Any person who willfully fails to properly respond to a
123 citation issued under paragraph (b) shall, in addition to the
124 citation, be charged with the offense of failing to respond to
125 the citation and, upon conviction, commits a misdemeanor of the
126 second degree, punishable as provided in s. 775.082 or s.



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

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

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

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

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



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

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

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

179 (3) MISDEMEANORS.—

180 (a) Any person who knowingly and willfully removes or
181 otherwise destroys the valid stakes or other valid physical
182 markings described in s. 556.105(5) (a) and (b) used to mark the
183 horizontal route of an underground facility commits a
184 misdemeanor of the second degree, punishable as provided in s.



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185 775.082 or s. 775.083. For purposes of this subsection, stakes
186 or other nonpermanent physical markings are considered valid for
187 30 calendar days after information is provided to the system
188 under s. 556.105(1) (a).

189 (b) Any person who knowingly and willfully removes or
190 damages a permanent marker placed to identify the approximate
191 location of an underground facility commits a misdemeanor of the
192 second degree, punishable as provided in s. 775.082 or s.
193 775.083.

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

196 556.116 High-priority subsurface installations; special
197 procedures.-

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

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

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

213 ~~(c) "Incident" means an event that involves damage to a~~



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214 ~~high-priority subsurface installation that has been identified~~
215 ~~as such by the operator according to the notification procedures~~
216 ~~set forth in subsection (2) and that:~~

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

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

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

240 (2) (a) ~~(3) (a)~~ An alleged commission of an infraction listed
241 in s. 556.107(1) which results in an incident must be reported
242 to the system and the State Fire Marshal by a member operator or



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243 an excavator within 24 hours after learning of the alleged
244 occurrence of an incident.

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

259 (c) The State Fire Marshal or agents as provided in ss.
260 633.114, 633.116, and 633.118 ~~division has jurisdiction in a~~
261 ~~proceeding under this section to determine the facts and law~~
262 ~~concerning an alleged incident. The division may~~ issue a
263 citation and impose a civil penalty ~~fine~~ against a violator in
264 an amount not to exceed \$50,000 if the person violated a
265 provision of s. 556.107(1)(a) and that violation was a proximate
266 cause of the incident. However, if a state agency or political
267 subdivision caused the incident, the state agency or political
268 subdivision may not be fined in an amount in excess of \$10,000.

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



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272 (e) If an additional civil penalty is imposed by the State
273 Fire Marshal or his or her agents, 5 percent of the civil
274 penalty must be retained by the clerk to cover administrative
275 costs, and the remainder of the civil penalty must be equally
276 distributed between a program created to procure equipment,
277 supplies, and educational training designed to mitigate
278 firefighter exposure to hazardous, cancer-causing chemicals and
279 between the system to be used exclusively for damage-prevention
280 education ~~A fine against an excavator or a member operator~~
281 ~~imposed under this subsection shall be paid to the system, which~~
282 ~~shall use the collected fines to satisfy the costs incurred by~~
283 ~~the system for any proceedings under this section. To the extent~~
284 ~~there are any funds remaining, the system may use the funds~~
285 ~~exclusively for damage-prevention education.~~

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

294 (g) This section does not change the basis for civil
295 liability. The findings and results of an investigation a
296 ~~hearing~~ under this section may not be used as evidence of
297 liability in any civil action.

298 ~~(4)(a) The division shall issue and serve on all original~~
299 ~~parties an initial order that assigns the case to a specific~~
300 ~~administrative law judge and requests information regarding~~



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301 ~~scheduling the final hearing within 5 business days after the~~
302 ~~division receives a petition or request for hearing. The~~
303 ~~original parties in the proceeding include all excavators and~~
304 ~~member operators identified by the system as being involved in~~
305 ~~the alleged incident. The final hearing must be conducted within~~
306 ~~60 days after the date the petition or the request for a hearing~~
307 ~~is filed with the division.~~

308 ~~(b) Unless the parties otherwise agree, venue for the~~
309 ~~hearing shall be in the county in which the underground facility~~
310 ~~is located.~~

311 ~~(c) An intervenor in the proceeding must file a petition to~~
312 ~~intervene no later than 15 days before the final hearing. A~~
313 ~~person who has a substantial interest in the proceeding may~~
314 ~~intervene.~~

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

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

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

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

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

325 ~~(b) All parties shall attend a prehearing conference for~~
326 ~~the purpose of identifying the legal and factual issues to be~~
327 ~~considered at the final hearing, the names and addresses of~~
328 ~~witnesses who may be called to testify at the final hearing,~~
329 ~~documentary evidence that will be offered at the final hearing,~~



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330 ~~the range of penalties that may be imposed, and any other matter~~
331 ~~that would expedite resolution of the proceeding. The prehearing~~
332 ~~conference may be held by telephone conference call.~~

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

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

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

342 ~~1. All notices, pleadings, motions, and intermediate~~
343 ~~rulings.~~

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

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

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

347 ~~5. Matters placed on the record after an ex parte~~
348 ~~communication.~~

349 ~~6. The written final order of the administrative law judge~~
350 ~~presiding at the final hearing.~~

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

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

356 ~~(g) The administrative law judge shall issue a final order~~
357 ~~within 30 days after the final hearing or the filing of the~~
358 ~~transcript thereof, whichever is later. The final order of the~~



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359 ~~administrative law judge must include:~~

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

362 ~~2. Conclusions of law. In determining whether a party has~~
363 ~~committed an infraction of s. 556.107(1) (a), and whether the~~
364 ~~infraction was a proximate cause of an incident, the commission~~
365 ~~of an infraction must be proven by a preponderance of the~~
366 ~~evidence.~~

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

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

370

371 ~~The final order of the administrative law judge constitutes~~
372 ~~final agency action subject to judicial review pursuant to s.~~
373 ~~120.68.~~

374 Section 4. Section 556.117, Florida Statutes, is created to
375 read:

376 556.117 Underground facility damage prevention review.-
377 Sunshine State One-Call of Florida, Inc., shall review the
378 reports submitted by the clerks of court to the State Fire
379 Marshal and any complaints of alleged violations under this
380 chapter to identify issues or potential issues with damage
381 prevention and enforcement. The corporation shall identify areas
382 in the state where additional education related to damage
383 prevention and enforcement is needed and shall recommend
384 solutions to remedy issues related to damage prevention and
385 enforcement. The corporation shall, by October 1 of each year,
386 submit to the Governor, the President of the Senate, and the
387 Speaker of the House of Representatives an analysis of its



388 reviews and any recommendations for improving underground
389 facility damage prevention and enforcement.

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

391

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

393 And the title is amended as follows:

394 Delete everything before the enacting clause
395 and insert:

396 A bill to be entitled
397 An act relating to underground facility damage
398 prevention and safety; amending s. 556.102, F.S.;
399 defining the term "permanent marker" and consolidating
400 other definitions from throughout the chapter;
401 amending s. 556.107, F.S.; revising noncriminal
402 violations and providing noncriminal violations
403 relating to the transportation of certain hazardous
404 materials; authorizing the State Fire Marshal or his
405 or her agents to issue certain citations; providing
406 enhanced civil penalties; providing disposition of the
407 civil penalty; requiring a report by additional
408 entities; providing civil penalties relating to
409 removing or damaging a permanent marker; amending s.
410 556.116, F.S.; moving and consolidating definitions to
411 the definition section for the chapter; providing that
412 certain incident reports must be submitted to, and
413 investigated by, the State Fire Marshal or his or her
414 agents; authorizing the State Fire Marshal or his or
415 her agents to issue citations and civil penalties;
416 providing for disposition of the civil penalty;



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