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DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 1475

RELATING TO: Underground Facility Damage Prevention and Safety Act

SPONSOR(S): Representative Hogan

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & TELECOMMUNICATIONS (RIC) YEAS 15 NAYS 0
- (2) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (3) READY INFRASTRUCTURE
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Chapter 93-240, Laws of Florida, created the "Underground Facility Damage Prevention and Safety Act." The act is codified at chapter 556, Florida Statutes. It established a statewide one-call notification system. The purpose of the act was to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations."

The bill expands the types of free access to the one-call access system. It allows additional sources of revenue for the system. It redefines the terms "business hours," "excavate," and "system", and defines the terms "design services," "positive response," "premark," and "tolerance zone." It allows local officers to enforce the act. It limits liability for non-member small cities under the act until January 1, 2003.

The bill provides for premarking of underground facilities and marking for underground facilities under the waters of the state. It provides procedures for excavation in tolerance zones. It provides time limits for member operators to act before excavation can begin. The bill provides for compliance when a member operator can locate facilities with detection devices. It clarifies duties of affected persons in "extraordinary circumstances." It requires the system board of directors to develop procedures for "positive response."

It provides that member operators and employees of excavators can be issued citations for violation of the act and limits right of recovery for damages for facility owners, not members of the system. It revises non-criminal infractions to include member operator and employees of excavator. It provides for removal of markers after 20 days when they are no longer considered valid. It provides for a response and report on design services.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 93-240, Laws of Florida, created the "Underground Facility Damage Prevention and Safety Act." The act is codified at chapter 556, Florida Statutes. It established a statewide one-call notification system. A single toll-free number is provided for persons to give notification to owners of underground facilities of intent to engage in excavation or demolition. Section 556.101, Florida Statutes, states that the purpose of the act is to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations."

A not-for-profit corporation was established pursuant to section 556.101(3)(c), Florida Statutes, comprised of operators of underground facilities in Florida to administer the provisions of chapter 556, Florida Statutes. The corporation, "Sunshine State One-Call of Florida, Inc." was incorporated on February 1, 1993. The cost of the system is funded "entirely and exclusively" by assessed contribution from the members of the corporation, called member operators.

Section 556.102, Florida Statutes, provides definitions. "Business hours" means that hours of a day that the toll-free telephone number is answered by a natural person. "Underground facility" is public or private property that is buried on a member operator's right-of-way, easement, or permitted use or storage area used for various energy, telecommunications and water related uses. "Excavation" is defined as "any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth . . . that penetrates or disturb the surface of the earth." "Member operator" is "any person who furnishes or transports materials or services by means of an underground facility. . . ." The "system" is the one-call toll-free telephone notification system established by the corporation.

Section 556.104, Florida Statutes, requires any person who "furnishes or transports materials or services by means of an underground facility" to participate as a member operator of the system except for a small city as defined in section 120.52, Florida Statutes.

An excavator is required, under section 556.105, Florida Statutes, to provide information concerning a proposed excavation or demolition not less than 2 nor more than 5 business days before beginning any excavation or demolition. The information includes the following:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.
2. The name and telephone number of the representative for the excavator.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.
4. The commencement date and anticipated duration of the excavation or demolition.
5. Whether machinery will be used for the excavation or demolition.
6. The person or entity for whom the work is to be done.
7. The type of work to be done.
8. The approximate depth of the excavation.

The excavator is required to provide the above information by calling the statewide toll-free number during business hours. The information is considered valid for 20 calendar days. The system is required to provide the excavator with the names of the member operators who will be advised of the notification including a notification number that specifies the date and time of the notification. If the member operator determines that the proposed excavation or demolition is in proximity or in conflict with an underground facility, the operator is required to identify the horizontal route to within 24 inches of the outer edge of the underground facility by use of stakes, paint, flags, or other suitable methods within 48 hours, excluding weekends and holidays, after notification is received. The excavator cannot excavate in the area until its is marked or 48 hours has elapsed after notification.

Section 556.016, Florida Statutes, provides that if any person does not notify the system or excavates before it is marked and damages the owner operator's underground facility, there is a rebuttable presumption that the person was negligent.

Violations of the provisions of the act under section 556.107, Florida Statutes, are non-criminal infractions and any excavator who commits an infraction may be issued a citation by any local or state law enforcement officer or permitting agency inspector. The citation may require the excavator to stop work or not begin until there is compliance with the provisions of the act.

C. EFFECT OF PROPOSED CHANGES:

Please see Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 556.101, Florida Statutes, to expand the access to the call center and provide notification to the system by means other than the current single toll-free telephone number. It allows the system to be funded by means other than "entirely and exclusively" by contributions from the member operators, including charges to other persons for services they requested or that were provided to them such as record searches, education or training, and damage prevention activities. This section also reserves the power to the state to regulate any subject included in the act. It also allows any local law enforcement officer or permitting agency inspector to enforce the act without the necessity of adopting a local code or ordinance. It limits the liability of small cities that choose not to participate in the system until January 1, 2003 when they will be subject to the provisions of chapter 556, Florida Statutes. Counties and larger municipalities would be subject to the act.

Section 2. Amends section 556.102, Florida Statutes, to clarify that "business hours" means the hours that the system is open for business. It specifically defines "design services" to include service provided to a design engineer, architect, surveyor, or planner by a member operator based on information from records, above ground surveys, technologies to locate horizontal underground facilities, or exposing the underground facilities. This section also includes the land beneath the waters of the state and trench-less technologies in the definition of "excavate or excavation." The exemption for small municipalities is maintained in the definition of "member operator." The section

also defines "positive response" as the communications on the status of the location of an underground facility. "Premark" is defined as marking the general scope of the excavation with white paint, stakes, or other white markings. "Tolerance zone" is defined as 24 inches from either side of a marked underground facility. The definition of "system" is amended to include the different types of access rather than just the toll-free telephone number.

Section 3. Amends section 556.104, Florida Statutes, to conform with the expanded access to the system.

Section 4. Amends section 556.105, Florida Statutes, to conform to the expanded access to the system. The excavator is required to provide information on the excavation not less than 2 nor more than 5 full days before the excavation. It also provides that if an excavation site cannot be sufficiently identified through information supplied to the system, the excavator must premark the proposed area of excavation before the member operator will be required to identify the underground facilities, unless otherwise agreed to by the parties. The pre-marking is not required if the excavation is over 500 feet in length or if it will interfere with traffic or pedestrian control. It requires a member operator to mark the underground facilities within 2 full business days after the time notification is received by the system. If the facilities are under the waters of the state, the member operator shall mark the facilities within 10 business days using marking buoys or other suitable devices, unless otherwise directed by an agency with jurisdiction over the area. An excavator is required to use increased caution when excavating within a tolerance zone. Hand digging, pot holing, soft digging, vacuum excavation methods and similar procedures are required to be used. The excavator must supervise the use of mechanized equipment within the zone.

A member operator may state rather than certify that it does not have accurate information on the exact location of the underground facilities and will be exempt from the marking of the facilities. An excavator is not liable for any damage to an underground facility if reasonable care is used and acceptable means are used to locate the underground facilities. This exemption is not available to a member operator if the underground facilities are still in service and they can be located by detection equipment.

If extraordinary circumstances apply as defined in this section and the member operator cannot identify the underground facilities, then the system shall notify the excavator who can then excavate. The system is to remain available during business hours to provide information to the affected persons, unless the system itself is affected by the extraordinary circumstances. If a member operator determines that an excavation or demolition is not near an existing underground facility, the member operator is required to notify the excavator within 2 full business days of the notification that no conflict exists. The system is required to implement procedures for positive response by January 1, 2004.

Section 5. Amends section 556.106, Florida Statutes, to provide that if an owner of an underground facility does not become a member of the one-call system and the failure causes damage to the owner's facilities, the excavator is not liable if the provisions of the act have been complied with and reasonable care has been exercised in the excavation.

Section 6. Amends section 556.107, Florida Statutes, to conform cross references for non-criminal infractions and provide that it is a non-criminal infraction for a member operator not to mark an underground facility pursuant to the provisions of section 556.105(4)(b) and (c), Florida Statutes. A member operator does not commit an infraction if the underground facility is marked incorrectly. It provides that a member operator who commits an infraction may be issued a citation by any local or state law enforcement officer or permitting agency inspector. Citations may also be issued to any employee of an excavator or member operator directly involved in the non-criminal infraction. It conforms the court appearance provisions with the changes in the non-criminal infraction provisions. It provides that the nonpermanent markings are valid for 20 calendar days after the

excavator notifies the system of the excavation and amends this provision so that any person who knowingly removes or otherwise destroys the nonpermanent markings only during this time period commits a misdemeanor of the second degree.

Section 7. Amends section 556.10, Florida Statutes, to provide that if assessments to the member operators of the cost of the system are made on a per-notification basis, any member that receives fewer than 10 notifications per month shall not be assessed for that month.

Section 8. Amends section 556.112, Florida Statutes, to provide requirements regarding design services. It requires each member operator to provide a current list of contacts for design engineers, architects, surveyors, and planners to contact for design services. The member operator is also to submit a current list of fees for the services. This does not affect utility relocations under the right-of-way statute, section 37.403, Florida Statutes. Each member operator must respond to a request for design services within 20 business days. The system is required to study the issue of requests for design services and report to the Legislature before January 1, 2004.

Section 9. This act shall take effect October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Hogan has agreed to sponsor four amendments. The first amendment provides that it is not the purpose of the act to amend or void permits issued by state agencies for placement or maintenance of facilities in their right-of-ways. The second amendment removes the stipulation that assessments made on a per-notification basis in a quantity of less than ten per month, should not be assessed in that given month. The third amendment removes language that states that the subsection on design services does not affect requirements under current law for a member operator to incur the expense for design services for utility relocations. The fourth amendment states that the section on design services does not apply to state agencies, counties, municipalities, or contractors, consultants, agents, or persons or firms acting under their authority, in the planning, preparing or performance of work in their right-of-way. The fourth amendment also states that the section shall not limit or expand any existing law governing the process a state agency, municipality or county uses to request design services from number operators or the responsibility for providing or paying for such services.

VII. SIGNATURES:

COMMITTEE ON UTILITIES & TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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