

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1221

Pub. Rec./Sunshine State One-Call of Florida, Inc.

SPONSOR(S): Robaina

TIED BILLS:

IDEN./SIM. BILLS: SB 1510

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|------------------|-------------------|-------------------|
| 1) <u>Committee on State Affairs</u> | <u>8 Y, 0 N</u> | <u>Williamson</u> | <u>Williamson</u> |
| 2) <u>Government Efficiency & Accountability Council</u> | <u>11 Y, 0 N</u> | <u>Williamson</u> | <u>Cooper</u> |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act. The intent of the act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.

The act provides for creation of the Sunshine State One-Call Of Florida Inc. (One-Call), as a non-profit corporation. Each operator of an underground facility is a member. The membership elects a board of directors to administer the system, which is a free-access notification system established by One-Call. The board is subject to the public records and public meetings laws.

This bill creates a public records exemption for proprietary confidential business information held by One-Call. It also provides a definition of "proprietary confidential business information." This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Sunshine State One-Call

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act. The intent of the act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.¹

The act provides for creation of the Sunshine State One-Call Of Florida Inc. (One-Call), as a non-profit corporation.² Each operator of an underground facility³ is a member.⁴ The membership elects a board of directors⁵ to administer the system, which is a free-access notification system established by One-Call.⁶ The board of directors is subject to the public records and public meetings laws.

When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify their underground facilities. Under this notification system, One-Call is not required or permitted to locate or mark underground facilities, but those member operators who are provided notice of an excavation must locate and mark underground facilities within two business days of notice.⁷

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a “ticket” which provides specific information about the proposed excavation such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.⁸

Recently, One-Call invested in a member ticket management software system which allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was accessible only to member operators who bought ticket management systems.⁹

¹ Section 556.101(1) and (2), F.S.

² Section 556.103(1), F.S.

³ Section 556.102, F.S., defines “underground facility” as any public or private personal property which is buried, placed below ground, or submerged on any member operators 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.

⁴ Section 556.103(1), F.S.

⁵ Section 556.103(2), F.S.

⁶ Section 556.102(14), F.S.

⁷ Section 556.105, F.S.

⁸ *Id.*

⁹ Professional Staff Analysis and Economic Impact Statement for SB 1510, Senate Communications and Public Utilities Committee, March 19, 2007, at 2.

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹⁰ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

EFFECT OF BILL

The bill creates a public records exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system. It defines "proprietary confidential business information" as information provided by:

- A member operator that is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, trade secret, or that describes the exact location of a utility underground facility or the protection, repair, or restoration thereof.¹¹
- An excavator that is an internal damage investigation report or analysis relating to underground utility facilities damages.¹²

The bill provides for future review and repeal of the exemption on October 2, 2012. It also provides a public necessity statement as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 creates s. 556.113, F.S., to create a public records exemption for One-Call.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2007, effective date.

¹⁰ Section 119.15, F.S.

¹¹ The bill provides that the information: is intended to be and is treated by the member operator as confidential; the disclosure would be reasonably likely to be used by a competitor to harm the business interests of the member operator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call.

¹² In addition, the bill provides that the information: is intended to be and is treated by the excavator as confidential; the disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call.

II. 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:

The bill likely could create a minimal fiscal impact on One-Call, because staff responsible for complying with public records requests will require training related to the creation of the current public records exemption. In addition, One-Call could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, should be absorbed as they would be part of the day-to-day responsibilities for One-Call.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.