

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1095 Underground Facility Damage Prevention and Safety

**SPONSOR(S):** Commerce Committee; Energy & Utilities Subcommittee; Fitzenhagen

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Helpling	Topp
3) Commerce Committee	23 Y, 0 N, As CS	Keating	Hamon

### SUMMARY ANALYSIS

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation (Sunshine 811) to administer a free-access notification system.

The bill amends ch. 556, F.S., to:

- Expand the list of entities that may issue citations for violations of ch. 556, F.S., to include the State Fire Marshal, or its designated agent, and local fire chiefs.
- Increase the maximum civil penalty (up to \$2,500 plus 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. DOT Pipeline and Hazardous Material Safety Administration (PHMSA). Eighty percent of the civil penalty must be distributed to the entity that issued the citation, and the clerk of court retains the remainder.
- Require each clerk of court to submit an annual report to the State Fire Marshal listing each citation issued for a violation of ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Define the term “permanent marker” and establish a criminal penalty for knowingly and willfully removing or damaging a permanent marker placed to identify the location of an underground facility.
- Require excavators and underground facility operators to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by the State Fire Marshal, or its designated agent, who may issue a citation and impose a civil penalty for a violation of ch. 556, F.S., that it finds to be a proximate cause of the incident. Upon collection, five percent of the civil penalty must be retained by the clerk of court, and the remainder must be distributed equally between Sunshine 811 (to fund damage-prevention education) and the State Fire Marshal (to fund programs that provide financial assistance to fire departments to procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals).
- Require Sunshine 811 to review all reports made to the State Fire Marshal and all other complaints of alleged violations of ch. 556, F.S., to identify issues related to damage prevention and enforcement, and annually provide an analysis and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill may have an indeterminate positive fiscal impact on state and local government revenues. The bill may require the State Fire Marshal, or a local agent designated by the State Fire Marshal, to expend resources to investigate HPSI incidents. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to the State Fire Marshal or its agent through enforcement of ch. 556, F.S.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### 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 goal of the Act is to identify and locate underground facilities<sup>1</sup> prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.<sup>2</sup> To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person’s intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.<sup>3</sup> All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.<sup>4</sup>

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc., which operates under the name “Sunshine 811” and exercises its powers through a board of directors.<sup>5</sup> The system 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.<sup>6</sup> The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.<sup>7</sup> The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.<sup>8</sup> Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.<sup>9</sup>

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.<sup>10</sup> Within two 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

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<sup>1</sup> s. 556.102(13), F.S., defines “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 chapter 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 chapter 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.”

<sup>2</sup> S. 556.101(3), F.S.

<sup>3</sup> S. 556.101(2), F.S.

<sup>4</sup> S. 556.103(1), F.S.

<sup>5</sup> S. 556.103, F.S.

<sup>6</sup> S. 556.104, F.S.

<sup>7</sup> S. 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

<sup>8</sup> S. 556.105(1)(c), F.S.

<sup>9</sup> S. 556.105(3), F.S.

<sup>10</sup> S. 556.105(5), F.S. The statute also provides that 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.

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.<sup>11</sup>

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) 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.<sup>12</sup>

Violations of certain provisions are noncriminal infractions enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The law establishes a civil penalty of \$500, plus court costs, for such infractions.<sup>13</sup> Eighty percent of the civil penalty collected by the clerk of the court will be 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.<sup>14</sup> The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

In 2010, the Legislature established a special process to address damages to any facility identified as a "high-priority subsurface installation"<sup>15</sup> (HPSI). These facilities 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.<sup>16</sup> 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.<sup>17</sup> 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 a proximate cause of the incident. If DOAH finds that a violation was a 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).<sup>18</sup> Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs to engage DOAH's services, and any remaining funds may be used only for damage-prevention education.<sup>19</sup>

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 (PHMSA). Second, if an event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.<sup>20</sup>

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

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<sup>11</sup> S. 556.105(5), F.S.

<sup>12</sup> S. 556.105(6), F.S.

<sup>13</sup> S. 556.107(1), F.S.

<sup>14</sup> S. 556.107(1)(c), F.S.

<sup>15</sup> Ch. 2010-100, L.O.F., s. 10.

<sup>16</sup> S. 556.116, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Ch. 2017-102, L.O.F.

calendar year.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage events were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.<sup>25</sup> These citations resulted in \$6,602.50 of fines being levied. Further, the Annual Report identifies one incident referred to DOAH involving damage to an HPSI. 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.<sup>26</sup>

### *U.S. DOT Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs*

The U.S. DOT 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.<sup>27</sup>

On July 13, 2015, 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.<sup>28</sup>

Under its rule, PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program<sup>29</sup>:

- 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?
- 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.

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<sup>21</sup> S. 556.107(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> S. 556.103(5), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Sunshine 811, 2018-19 Annual Report, available at

<https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19-annualrpt.pdf> (last visited Feb. 18, 2020).

<sup>26</sup> *Id.*

<sup>27</sup> 49 U.S.C. § 60114.

<sup>28</sup> U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

<sup>29</sup> *Id.*

- 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.

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.<sup>30</sup> States that fail to establish an adequate enforcement program within five 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.<sup>31</sup> PHMSA has found Florida's enforcement program to be inadequate each year since 2016, with its most recent finding submitted in June 2019.<sup>32</sup>

### *State Fire Marshal*

Florida's Chief Financial Officer is designated by law as the State Fire Marshal.<sup>33</sup> The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup> 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 fire suppression industry workers. It has six field offices and 3 satellite offices around the state.<sup>37</sup>

Florida law provides investigatory authority for the State Fire Marshal.<sup>38</sup> 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

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> U.S Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Notice of Inadequacy Letter for 2018*, (Jun. 28, 2019) <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/safety-awareness/pipeline/55641/fl-signed-notice-inadequacy-letter-2018-php-19-0112-signed.pdf> (last visited Feb. 18, 2020).

<sup>33</sup> S. 633.104(1), F.S.

<sup>34</sup> S. 633.104(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Chief Financial Officer, *Division of State Fire Marshal*, <https://www.myfloridacfo.com/Division/SFM/> (last visited Feb. 18, 2020).

<sup>37</sup> *Id.*

<sup>38</sup> S. 366.112, F.S.

may require testimony under oath from persons believed to be aware of any facts related to matters under investigation. 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.

## **Effect of Proposed Changes**

### *Expanded Enforcement Authority*

The bill expands the list of entities that may issue citations for certain violations of ch. 556, F.S., to include the State Fire Marshal, or its designated agent,<sup>39</sup> and the fire chief of the special district, municipality, or county.

### *New Noncriminal and Criminal Infractions*

The bill adds one item to the list of violations that are noncriminal infractions under ch. 556, F.S. In particular, the bill provides that the failure of an excavator to use increased caution when excavating within a tolerance zone<sup>40</sup> is a noncriminal infraction.

The bill provides that a person who knowingly and willfully removes or damages a permanent marker placed to identify the approximate location of an underground facility commits a second degree misdemeanor, punishable as provided by s. 775.082, F.S., or s. 775.083, F.S. The bill defines a permanent marker as “a clearly visible indication of the approximate location of an underground facility which is made of material that is durable in nature and which is reasonably expected to remain in position for the life of the underground facility.”

### *Enhanced Civil Penalties for Certain Violations*

The bill provides for an “enhanced” civil penalty of \$2,500 plus court costs for certain violations of ch. 556, F.S., that 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 when a PHMSA-regulated underground pipeline or facility is involved:

- 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,<sup>41</sup> 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 or no longer visible.

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<sup>39</sup> The bill refers specifically to agents that the State Fire Marshal is authorized to designate under ss. 633.114 and 633.116, F.S.

<sup>40</sup> “Tolerance zone” means “24 inches from the outer edge of either side of the exterior surface of a marked underground facility.” S. 556.102(12), F.S.

<sup>41</sup> *Id.*

- 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 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 remaining 20 percent, plus any additional court costs, is retained by the clerk of court.

The bill provides that a person who willfully fails to properly respond to a citation issued for a noncriminal infraction will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree. The bill provides that a written warning to this effect must be provided at the time the citation is issued.

If a person elects to have the county court hold a hearing on an infraction, the bill provides that court, upon finding that an infraction occurred, may not impose a civil penalty that exceeds the otherwise applicable civil penalty for the underlying infraction, plus court costs. The bill provides that the person may appeal the amount of the civil penalty imposed.

### *Reporting Requirements*

The bill provides that, by March 31 of each year, each clerk of court must submit a report to the State Fire Marshal and Sunshine 811 listing each citation issued for a violation of ch. 556, F.S., that was filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction, the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction. The report also must indicate whether the civil penalty for the infraction was paid.

### *Incidents Involving High-Priority Subsurface Installations*

The bill requires a member operator or an excavator, within 24 hours of learning of an alleged infraction that causes an incident involving a high-priority subsurface installation (HPSI), to report the alleged infraction to both Sunshine 811 and the State Fire Marshal. The member operator or excavator must transmit an incident report to the State Fire Marshal to conduct an investigation to determine whether an incident has occurred and, if so, whether a violation of s. 556.107(1)(a), F.S., was a proximate cause of the incident. The State Fire Marshal may authorize an agent to conduct the investigation. Such agents may include the chief of a special district, county, or municipal fire service provider, other fire service provider personnel designated by a fire chief, or other enforcement personnel designated by local governments with no organized fire service provider.<sup>42</sup>

The State Fire Marshal, or its designated agent, may issue a citation and impose a civil penalty if it finds that a violation occurred and was a proximate cause of the incident. As provided by current law, the civil penalty may not exceed \$50,000. Upon collection, the clerk of court must retain five percent of the civil penalty to cover administrative costs and must distribute the remainder equally between Sunshine 811 and the State Fire Marshal. The portion distributed to Sunshine 811 must be used exclusively to fund damage-prevention education. The portion distributed to the State Fire Marshal must be used exclusively to fund programs created within the State Fire Marshal that provide need-based financial assistance to fire departments, including volunteer fire departments, to procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals.<sup>43</sup>

The bill provides that a person who willfully fails to properly respond to a citation issued for an infraction that is the proximate cause of an HPSI incident will be charged with the offense of failing to respond to

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<sup>42</sup> S. 633.118, F.S.

<sup>43</sup> The pending Committee Substitute for HB 487 (2020) creates a program within the State Fire Marshal's office that meets these specific criteria.

the citation and, if convicted, commits a misdemeanor of the second degree. The bill provides that a written warning to this effect must be provided at the time the citation is issued.

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.

#### *Underground Facility Damage Prevention Review*

The bill requires Sunshine 811 to review all reports submitted by the clerks of court to the State Fire Marshal and all complaints of alleged violations of ch. 556, F.S., to identify issues or potential issues with underground facility damage prevention and enforcement. Sunshine 811 must identify areas in the state where additional education is needed and recommend solutions to issues it has identified. By October 1 of each year, Sunshine 811 must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an analysis of its review, including any recommendations for improving underground facility damage prevention and enforcement.

The bill provides an effective date of July 1, 2020.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 556.102, F.S., relating to definitions.

**Section 2.** Amends s. 556.107, F.S., relating to violations.

**Section 3.** Amends s. 556.116, F.S., relating to high-priority subsurface installations.

**Section 4.** Creates s. 556.117, F.S., requiring an annual review relating to underground facility damage prevention and enforcement.

**Section 5.** Provides an effective date of July 1, 2020.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenues.

The bill authorizes the State Fire Marshal to issue citations for certain violations specified in ch. 556, F.S. Further, the bill 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. Depending on the type of violation, the State Fire Marshal will receive between 47.5 percent and 80 percent of the civil penalties collected from citations it issues. In addition, other state law enforcement authorities will receive 80 percent of the penalties collected from citations that they issue. Thus, the bill may encourage greater enforcement efforts by these entities, leading to additional state revenues. The significance of the increase in state revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of the State Fire Marshal and other state authorities.

#### 2. Expenditures:

The bill may require the expenditure of resources by the State Fire Marshal to investigate an alleged HPSI incident. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to the State Fire Marshal through its enforcement of ch. 556, F.S.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an indeterminate positive impact on local government revenues.

The bill authorizes local fire chiefs to issue citations for certain violations specified in ch. 556, F.S. Further, the bill 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. Because fire chiefs and other local enforcement authorities that issue such citations will receive 80 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by local authorities, leading to additional local revenues. The significance of the increase in revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs and other local authorities.

#### 2. Expenditures:

The bill may require the expenditure of resources by a local agent, such as a fire chief, designated by the State Fire Marshal to investigate an alleged HPSI incident. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch. 556, F.S.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the fire chief of a special district, municipality, or county may enforce certain provisions of ch. 556, F.S.
- Removed the bill's requirement that an annual report of infractions be sent by each clerk of court to the Public Service Commission.
- Required the State Fire Marshal to appoint the members of the underground facility damage prevention review panel created by the bill, and provided that members of the review panel will serve without compensation or reimbursement of expenses.
- Removed a provision of the bill that required member operators to share equally in the costs of operating the review panel to the extent that those costs exceed the civil penalties recovered through citations issued by the State Fire Marshal.

On February 20, 2020, the Commerce Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Consolidated existing definitions in ch. 556, F.S.
- Defined the term "permanent marker" and established a criminal penalty for knowingly and willfully removing or damaging a permanent marker.
- Modified the required distribution of enhanced civil penalties collected for certain infractions by distributing 80 percent to the enforcing authority and 20 percent to the clerk of court to cover court costs.
- Limited the civil penalty that a county court may impose, after hearing, to the otherwise applicable civil penalty for the underlying infraction plus court costs.
- Required a member operator or an excavator, within 24 hours of learning of an alleged infraction that causes an incident involving an HPSI, to notify the State Fire Marshal.
- Provided that the State Fire Marshal, or its designated agent, must investigate and enforce infractions alleged to have caused HPSI incidents.
- Modified the required distribution of additional civil penalties collected for infractions that cause an HPSI incident such that: the clerk of court retains 5 percent for court costs; Sunshine 811 receives 50 percent of the remainder to use solely for damage-prevention education; and the State Fire Marshal receives the other 50 percent of the remainder to use solely for certain types of firefighter protection programs.

- Provided that it is a second degree misdemeanor to willfully fail to properly respond to any citation issued for an infraction under ch. 556, F.S.
- Required that each clerk of court, in its annual report to Sunshine 811 and the State Fire Marshal, must list each citation issued for violations of ch. 556, F.S., the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction.
- Provided that the State Fire Marshal may designate agents to conduct investigations and issue citations related to violations of ch. 556, F.S.
- Removed provisions of the bill that created an underground facility damage prevention review panel under the State Fire Marshal.
- Required Sunshine 811 to review all reports made to the State Fire Marshal and other complaints of alleged infractions to identify issues related to damage prevention and enforcement, and annually provide an analysis and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives

This analysis addresses the committee substitute as approved by the Commerce Committee.