

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

26 Florida, Inc., to review certain reports and
 27 complaints; requiring the corporation to identify
 28 areas in the state in need of additional education and
 29 to recommend solutions; requiring an annual report to
 30 the Governor and the Legislature by a specified date;
 31 providing an effective date.

32

33 Be It Enacted by the Legislature of the State of Florida:

34

35 Section 1. Subsections (8) and (9) through (14) of section
 36 556.102, Florida Statutes, are renumbered as subsections (10)
 37 and (12) through (17), respectively, and new subsections (8),
 38 (9), and (11) are added to that section, to read:

39 556.102 Definitions.—As used in this act:

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

51 excavate.

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

56 1. Results in death or serious bodily injury requiring
 57 inpatient hospitalization.

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

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

66 Section 2. Section 556.107, Florida Statutes, is amended
 67 to read:

68 556.107 Violations.—

69 (1) NONCRIMINAL INFRACTIONS.—

70 (a)1. Violations of the following provisions are
 71 noncriminal infractions:

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

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

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

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

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

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

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

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

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

100 a. Section 556.105(1), relating to providing required

101 information.

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

104 c. Section 556.105(6), relating to the avoidance of
105 certain excavation.

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

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

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

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

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

151 addition to any court costs.

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

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

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

172 (f) Any person may elect to have a hearing on the
173 commission of the infraction ~~appear~~ before the county court. A
174 person who elects to have a hearing waives ~~and if so electing is~~
175 ~~deemed to have waived~~ the limitations on the civil penalties

176 ~~penalty~~ specified in paragraph (c). The court, after a hearing,
177 shall make a determination as to whether an infraction has been
178 committed. If the commission of an infraction has been proven,
179 the court may impose a ~~civil~~ penalty not to exceed the
180 applicable civil penalty ~~\$5,000~~ plus court costs for each
181 infraction. In determining the amount of the civil penalty, the
182 court may consider previous noncriminal infractions committed.

183 (g) At a court hearing under this chapter, the commission
184 of a charged infraction must be proven by a preponderance of the
185 evidence.

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

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

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

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

209 (3) MISDEMEANORS.—

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

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

224 Section 3. Section 556.116, Florida Statutes, is amended
225 to read:

226 556.116 High-priority subsurface installations; special
227 procedures.—

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

229 ~~(a) "Division" means the Division of Administrative~~
230 ~~Hearings.~~

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

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

247 ~~1. Results in death or serious bodily injury requiring~~
248 ~~inpatient hospitalization.~~

249 ~~2. Results in property damage, including service-~~
250 ~~restoration costs, in an amount in excess of \$50,000 or~~

251 ~~interruption of service to 2,500 or more customers.~~

252 (1)~~(2)~~ When an excavator proposes to excavate or demolish
253 within 15 feet of the horizontal route of an underground
254 facility that has been identified as a high-priority subsurface
255 installation by the operator of the facility, the operator
256 shall, in addition to identifying the horizontal route of its
257 facility as set forth in s. 556.105(5) (a) and (b), and within
258 the time period set forth in s. 556.105(9) (a) for a positive
259 response, notify the excavator that the facility is a high-
260 priority subsurface installation. If the member operator
261 provides such timely notice of the existence of a high-priority
262 subsurface installation, an excavator shall notify the operator
263 of the planned excavation start date and time before beginning
264 excavation. If the member operator does not provide timely
265 notice, the excavator may proceed, after waiting the prescribed
266 time period set forth in s. 556.105(9) (a), to excavate without
267 notifying the member operator of the excavation start date and
268 time. The exemptions stated in s. 556.108 apply to the
269 notification requirements in this subsection.

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

275 (b) Upon receipt of an allegation that an incident has

276 | occurred, the member operator or excavator ~~system~~ shall transmit
277 | an incident report to the State Fire Marshal who shall ~~division~~
278 | ~~and contract with the division so that the division may~~ conduct
279 | an investigation ~~a hearing~~ to determine whether an incident has
280 | occurred, and, if so, whether a violation of s. 556.107(1)(a)
281 | was a proximate cause of the incident. The State Fire Marshal
282 | may authorize his or her agents, as provided in ss. 633.114,
283 | 633.116, and 633.118, to conduct investigations of incidents ~~The~~
284 | ~~contract for services to be performed by the division must~~
285 | ~~include provisions for the system to reimburse the division for~~
286 | ~~any costs incurred by the division for court reporters,~~
287 | ~~transcript preparation, travel, facility rental, and other~~
288 | ~~customary hearing costs, in the manner set forth in s.~~
289 | ~~120.65(9).~~

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

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

304 (e) If an additional civil penalty is imposed by the State
305 Fire Marshal or his or her agents, 5 percent of the civil
306 penalty must be retained by the clerk to cover administrative
307 costs, and the remainder of the civil penalty must be
308 distributed equally between the system and the State Fire
309 Marshal. The portion of the civil penalty distributed to the
310 system must be used exclusively to fund damage-prevention
311 education. The portion of the civil penalty distributed to the
312 State Fire Marshal must be used exclusively to fund programs
313 created within the State Fire Marshal's office that provide
314 need-based financial assistance to help fire departments,
315 including volunteer fire departments, procure equipment,
316 supplies, and educational training designed to mitigate
317 firefighter exposure to hazardous, cancer-causing chemicals ~~A~~
318 ~~fine against an excavator or a member operator imposed under~~
319 ~~this subsection shall be paid to the system, which shall use the~~
320 ~~collected fines to satisfy the costs incurred by the system for~~
321 ~~any proceedings under this section. To the extent there are any~~
322 ~~funds remaining, the system may use the funds exclusively for~~
323 ~~damage-prevention education.~~

324 (f) Any excavator or member operator who commits a
325 noncriminal infraction under s. 556.116(2)(c) must be provided a

326 written warning at the time a citation is issued stating that
327 any person who willfully fails to properly respond to a citation
328 will be charged, in addition to the citation, with the offense
329 of failing to respond to the citation and, if convicted, commits
330 a misdemeanor of the second degree, punishable as provided in s.
331 775.082 or s. 775.083.

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

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

346 ~~(b) Unless the parties otherwise agree, venue for the~~
347 ~~hearing shall be in the county in which the underground facility~~
348 ~~is located.~~

349 ~~(c) An intervenor in the proceeding must file a petition~~
350 ~~to intervene no later than 15 days before the final hearing. A~~

351 ~~person who has a substantial interest in the proceeding may~~
352 ~~intervene.~~

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

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

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

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

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

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

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

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

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

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

380 ~~1. All notices, pleadings, motions, and intermediate~~
 381 ~~rulings.~~

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

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

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

385 ~~5. Matters placed on the record after an ex parte~~
 386 ~~communication.~~

387 ~~6. The written final order of the administrative law judge~~
 388 ~~presiding at the final hearing.~~

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

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

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

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

400 ~~2. Conclusions of law. In determining whether a party has~~

401 ~~committed an infraction of s. 556.107(1)(a), and whether the~~
402 ~~infraction was a proximate cause of an incident, the commission~~
403 ~~of an infraction must be proven by a preponderance of the~~
404 ~~evidence.~~

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

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

408

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

412 Section 4. Section 556.117, Florida Statutes, is created
413 to read:

414 556.117 Underground facility damage prevention review.—
415 Sunshine State One-Call of Florida, Inc., shall review the
416 reports submitted by the clerks of court to the State Fire
417 Marshal and any complaints of an alleged violation under this
418 chapter to identify issues or potential issues with damage
419 prevention and enforcement. The corporation shall identify areas
420 in the state where additional education related to damage
421 prevention and enforcement is needed and shall recommend
422 solutions to remedy issues related to damage prevention and
423 enforcement. The corporation shall, by October 1 of each year,
424 submit to the Governor, the President of the Senate, and the
425 Speaker of the House of Representatives an analysis of its

CS/CS/HB 1095

2020

426 | reviews and any recommendations for improving underground
427 | facility damage prevention and enforcement.

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