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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
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	.	
	.	

The Committee on Infrastructure and Security (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (9) through (14) of section 556.102, Florida Statutes, are redesignated as subsections (10) through (15), respectively, and a new subsection (9) is added to that section, to read:

556.102 Definitions.—As used in this act:

(9) "Permanent marker" means a clearly visible indication



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11 of the approximate location of an underground facility which is
12 made of material that is durable in nature and which is
13 reasonably expected to remain in position for the life of the
14 underground facility.

15 Section 2. Section 556.107, Florida Statutes, is amended to
16 read:

17 556.107 Violations.—

18 (1) NONCRIMINAL INFRACTIONS.—

19 (a)1. Violations of the following provisions are
20 noncriminal infractions:

21 a.1. Section 556.105(1), relating to providing required
22 information.

23 b.2. Section 556.105(6), relating to the avoidance of
24 excavation.

25 c.3. Section 556.105(11), relating to the need to stop
26 excavation or demolition because marks are no longer visible,
27 or, in the case of underwater facilities, are inadequately
28 documented.

29 d.4. Section 556.105(12), relating to the need to cease
30 excavation or demolition activities because of contact or damage
31 to an underground facility.

32 e.5. Section 556.105(5) (a) and (b), relating to
33 identification of underground facilities, if a member operator
34 does not mark an underground facility, but not if a member
35 operator marks an underground facility incorrectly.

36 f.6. Section 556.109(2), relating to falsely notifying the
37 system of an emergency situation or condition.

38 g.7. Section 556.114(1), (2), (3), and (4), relating to a
39 failure to follow low-impact marking practices, as defined



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40 therein.

41 2. Violations of the following provisions when related to
42 an underground pipe or other underground facility transporting
43 hazardous materials that are regulated by the Pipeline and
44 Hazardous Materials Safety Administration of the United States
45 Department of Transportation are noncriminal infractions,
46 subject to enhanced civil penalties under paragraph (c):

47 a. Section 556.105(1), relating to providing required
48 information.

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

51 c. Section 556.105(6), relating to the avoidance of certain
52 excavation.

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

56 e. Section 556.105(12), relating to the need to cease
57 excavation or demolition activities because of contact with or
58 damage to an underground facility.

59 (b) Any excavator or member operator who commits a
60 noncriminal infraction under paragraph (a) may be issued a
61 citation by the State Fire Marshal; the fire chief of the
62 special district, municipality, or county; or any local or state
63 law enforcement officer, government code inspector, or code
64 enforcement officer, and the issuer of a citation may require an
65 excavator to cease work on any excavation or not start a
66 proposed excavation until there has been compliance with the
67 provisions of this chapter. Citations shall be hand delivered to
68 any employee of the excavator or member operator who is involved



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69 in the noncriminal infraction. The citation shall be issued in
70 the name of the excavator or member operator, whichever is
71 applicable.

72 (c) 1. Any excavator or member operator who commits a
73 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~
74 may be required to pay a civil penalty of \$500 plus court costs
75 ~~for each infraction, which is \$500 plus court costs.~~ If a
76 citation is issued by the State Fire Marshal; the fire chief of
77 the special district, municipality, or county; a state law
78 enforcement officer; ~~;~~ a local law enforcement officer; ~~;~~ a local
79 government code inspector; ~~;~~ or a code enforcement officer, 80
80 percent of the civil penalty collected by the clerk of the court
81 shall be distributed to the governmental entity whose employee
82 issued the citation and 20 percent of the penalty shall be
83 retained by the clerk to cover administrative costs, in addition
84 to other court costs. Any person who fails to properly respond
85 to a citation issued under ~~pursuant to~~ paragraph (b) shall, in
86 addition to the citation, be charged with the offense of failing
87 to respond to the citation and, upon conviction, commits a
88 misdemeanor of the second degree, punishable as provided in s.
89 775.082 or s. 775.083. A written warning to this effect must be
90 provided at the time any citation is issued under ~~pursuant to~~
91 paragraph (b).

92 2. Any excavator or member operator who commits a
93 noncriminal infraction under subparagraph (a)2. may be required
94 to pay an enhanced civil penalty of \$2,500 plus 5 percent in
95 addition to any other court costs for each infraction. If a
96 citation is issued by the State Fire Marshal; the fire chief of
97 the special district, municipality, or county; a state law



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98 enforcement officer; a local law enforcement officer; a local
99 government code inspector; or a code enforcement officer, 100
100 percent of the civil penalty collected by the clerk of the court
101 shall be distributed to the governmental entity whose employee
102 issued the citation. The additional 5 percent, plus any
103 additional court costs, is to be retained by the clerk to cover
104 administrative costs. Any person who willfully fails to properly
105 respond to a citation issued under paragraph (b) shall, in
106 addition to the citation, be charged with the offense of failing
107 to respond to the citation and, upon conviction, commits a
108 misdemeanor of the second degree, punishable as provided in s.
109 775.082 or s. 775.083. A written warning to this effect must be
110 provided at the time a citation is issued under paragraph (b).

111 (d) Any person cited for an infraction under paragraph (a)
112 may post a bond, which must ~~shall~~ be equal in amount to the
113 applicable civil penalty plus any additional court costs.

114 (e) A person charged with a noncriminal infraction under
115 paragraph (a) may pay the applicable civil penalty plus the
116 additional court costs, by mail or in person, within 30 days
117 after the date of receiving the citation. If the person cited
118 pays the civil penalty, she or he is deemed to have admitted to
119 committing the infraction and to have waived the right to a
120 hearing on the issue of commission of the infraction. The
121 admission may be used as evidence in any other proceeding under
122 this chapter.

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



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127 ~~penalty~~ specified in paragraph (c). The court, after a hearing,
128 shall make a determination as to whether an infraction has been
129 committed. If the commission of an infraction has been proven,
130 the court may impose a civil penalty not to exceed \$5,000 plus
131 court costs for each infraction. In determining the amount of
132 the civil penalty, the court may consider previous noncriminal
133 infractions committed.

134 (g) At a court hearing under this chapter, the commission
135 of a charged infraction must be proven by a preponderance of the
136 evidence.

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

141 (i) Sunshine State One-Call of Florida, Inc., may, at its
142 own cost, retain an attorney to assist in the presentation of
143 relevant facts and law in the county court proceeding pertaining
144 to the citation issued under this section. The corporation may
145 also appear in any case appealed to the circuit court if a
146 county court judge finds that an infraction of the chapter was
147 committed. An appellant in the circuit court proceeding shall
148 timely notify the corporation of any appeal under this section.

149 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
150 clerk of court shall submit a report to the State Fire Marshal
151 and Sunshine State One-Call of Florida, Inc., listing each
152 violation notice written under paragraph (1)(a) which has been
153 filed in that county during the preceding calendar year. The
154 report must state the name and address of the member or
155 excavator who committed each infraction and indicate whether or



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156 not the civil penalty for the infraction was paid.

157 (3) MISDEMEANORS.—

158 (a) Any person who knowingly and willfully removes or
159 otherwise destroys the valid stakes or other valid physical
160 markings described in s. 556.105(5) (a) and (b) used to mark the
161 horizontal route of an underground facility commits a
162 misdemeanor of the second degree, punishable as provided in s.
163 775.082 or s. 775.083. For purposes of this subsection, stakes
164 or other nonpermanent physical markings are considered valid for
165 30 calendar days after information is provided to the system
166 under s. 556.105(1) (a).

167 (b) Any person who knowingly and willfully removes or
168 damages a permanent marker that has been placed to identify the
169 approximate location of an underground facility commits a
170 misdemeanor of the second degree, punishable as provided in s.
171 775.082 or s. 775.083.

172 Section 3. Section 556.116, Florida Statutes, is amended to
173 read:

174 556.116 High-priority subsurface installations; special
175 procedures.—

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

177 (a) ~~“Division” means the Division of Administrative~~
178 ~~Hearings.~~

179 (a) ~~(b)~~ “High-priority subsurface installation” means an
180 underground gas transmission or gas distribution pipeline, an
181 underground pipeline used to transport gasoline, jet fuel, or
182 any other refined petroleum product or hazardous or highly
183 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
184 the pipeline is deemed to be critical by the operator of the



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185 pipeline and is identified as a high-priority subsurface
186 installation to an excavator who has provided a notice of intent
187 to excavate under ~~pursuant to~~ s. 556.105(1), or would have been
188 identified as a high-priority subsurface installation except for
189 the excavator's failure to give proper notice of intent to
190 excavate.

191 (b) ~~(e)~~ "Incident" means an event that involves damage to a
192 high-priority subsurface installation that has been identified
193 as such by the operator according to the notification procedures
194 set forth in subsection (2) and that:

195 1. Results in death or serious bodily injury requiring
196 inpatient hospitalization.

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

200 (2) When an excavator proposes to excavate or demolish
201 within 15 feet of the horizontal route of an underground
202 facility that has been identified as a high-priority subsurface
203 installation by the operator of the facility, the operator
204 shall, in addition to identifying the horizontal route of its
205 facility as set forth in s. 556.105(5) (a) and (b), and within
206 the time period set forth in s. 556.105(9) (a) for a positive
207 response, notify the excavator that the facility is a high-
208 priority subsurface installation. If the member operator
209 provides such timely notice of the existence of a high-priority
210 subsurface installation, an excavator shall notify the operator
211 of the planned excavation start date and time before beginning
212 excavation. If the member operator does not provide timely
213 notice, the excavator may proceed, after waiting the prescribed



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214 time period set forth in s. 556.105(9)(a), to excavate without
215 notifying the member operator of the excavation start date and
216 time. The exemptions stated in s. 556.108 apply to the
217 notification requirements in this subsection.

218 (3)(a) An alleged commission of an infraction listed in s.
219 556.107(1) which results in an incident must be reported to the
220 system by a member operator or an excavator within 24 hours
221 after learning of the alleged occurrence of an incident.

222 (b) Upon receipt of an allegation that an incident has
223 occurred, the system shall transmit an incident report to the
224 State Fire Marshal; the fire chief of the special district,
225 municipality, or county; a local or state law enforcement
226 officer; a government code inspector; or a code enforcement
227 officer in order to division and contract with the division so
228 that the division may conduct an investigation a hearing to
229 determine whether an incident has occurred, and, if so, whether
230 a violation of s. 556.107(1)(a) was a proximate cause of the
231 incident. ~~The contract for services to be performed by the~~
232 ~~division must include provisions for the system to reimburse the~~
233 ~~division for any costs incurred by the division for court~~
234 ~~reporters, transcript preparation, travel, facility rental, and~~
235 ~~other customary hearing costs, in the manner set forth in s.~~
236 ~~120.65(9).~~

237 (c) The State Fire Marshal; the fire chief of the special
238 district, municipality, or county; a local or state law
239 enforcement officer; a government code inspector; or a code
240 enforcement officer ~~division has jurisdiction in a proceeding~~
241 ~~under this section to determine the facts and law concerning an~~
242 ~~alleged incident. The division may~~ issue a citation and impose a



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243 civil penalty ~~fine~~ against a violator in an amount not to exceed
244 \$50,000 if the person violated a provision of s. 556.107(1) (a)
245 and that violation was a proximate cause of the incident.
246 However, if a state agency or political subdivision caused the
247 incident, the state agency or political subdivision may not be
248 fined in an amount in excess of \$10,000.

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

252 (e) If a civil penalty is imposed by the State Fire
253 Marshal; the fire chief of the special district, municipality,
254 or county; a local or state law enforcement officer; a
255 government code inspector; or a code enforcement officer under
256 this subsection, 95 percent of the civil penalty collected by
257 the clerk of the court shall be distributed to the governmental
258 entity whose employee issued the citation and civil penalty and
259 5 percent of the civil penalty shall be retained by the clerk to
260 cover administrative costs ~~A fine against an excavator or a~~
261 ~~member operator imposed under this subsection shall be paid to~~
262 ~~the system, which shall use the collected fines to satisfy the~~
263 ~~costs incurred by the system for any proceedings under this~~
264 ~~section. To the extent there are any funds remaining, the system~~
265 ~~may use the funds exclusively for damage-prevention education.~~

266 (f) This section does not change the basis for civil
267 liability. The findings and results of an investigation ~~a~~
268 ~~hearing~~ under this section may not be used as evidence of
269 liability in any civil action.

270 ~~(4) (a) The division shall issue and serve on all original~~
271 ~~parties an initial order that assigns the case to a specific~~



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272 ~~administrative law judge and requests information regarding~~
273 ~~scheduling the final hearing within 5 business days after the~~
274 ~~division receives a petition or request for hearing. The~~
275 ~~original parties in the proceeding include all excavators and~~
276 ~~member operators identified by the system as being involved in~~
277 ~~the alleged incident. The final hearing must be conducted within~~
278 ~~60 days after the date the petition or the request for a hearing~~
279 ~~is filed with the division.~~

280 ~~(b) Unless the parties otherwise agree, venue for the~~
281 ~~hearing shall be in the county in which the underground facility~~
282 ~~is located.~~

283 ~~(c) An intervenor in the proceeding must file a petition to~~
284 ~~intervene no later than 15 days before the final hearing. A~~
285 ~~person who has a substantial interest in the proceeding may~~
286 ~~intervene.~~

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

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

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

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

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

297 ~~(b) All parties shall attend a prehearing conference for~~
298 ~~the purpose of identifying the legal and factual issues to be~~
299 ~~considered at the final hearing, the names and addresses of~~
300 ~~witnesses who may be called to testify at the final hearing,~~



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301 ~~documentary evidence that will be offered at the final hearing,~~
302 ~~the range of penalties that may be imposed, and any other matter~~
303 ~~that would expedite resolution of the proceeding. The prehearing~~
304 ~~conference may be held by telephone conference call.~~

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

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

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

314 ~~1. All notices, pleadings, motions, and intermediate~~
315 ~~rulings.~~

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

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

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

319 ~~5. Matters placed on the record after an ex parte~~
320 ~~communication.~~

321 ~~6. The written final order of the administrative law judge~~
322 ~~presiding at the final hearing.~~

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

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

328 ~~(g) The administrative law judge shall issue a final order~~
329 ~~within 30 days after the final hearing or the filing of the~~



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330 ~~transcript thereof, whichever is later. The final order of the~~
331 ~~administrative law judge must include:~~

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

334 ~~2. Conclusions of law. In determining whether a party has~~
335 ~~committed an infraction of s. 556.107(1)(a), and whether the~~
336 ~~infraction was a proximate cause of an incident, the commission~~
337 ~~of an infraction must be proven by a preponderance of the~~
338 ~~evidence.~~

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

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

342
343 ~~The final order of the administrative law judge constitutes~~
344 ~~final agency action subject to judicial review pursuant to s.~~
345 ~~120.68.~~

346 Section 4. Upon the passage of SB 1092, 2020 Regular
347 Session, paragraph (e) of subsection (3) of section 556.116,
348 Florida Statutes, as amended by this act, is amended to read:

349 556.116 High-priority subsurface installations; special
350 procedures.—

351 (3)

352 (e) If a civil penalty is imposed by the State Fire
353 Marshal; the fire chief of the special district, municipality,
354 or county; a local or state law enforcement officer; a
355 government code inspector; or a code enforcement officer under
356 this subsection, \$2,500 ~~95 percent~~ of the civil penalty
357 collected by the clerk of the court shall be distributed to the
358 governmental entity whose employee issued the citation and civil



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359 penalty, ~~and~~ 5 percent of the civil penalty shall be retained by
360 the clerk to cover administrative costs, and the remainder of
361 the civil penalty shall be distributed to the Firefighter Cancer
362 Decontamination Equipment Grant Program created under s.
363 633.137.

364 Section 5. Section 556.117, Florida Statutes, is created to
365 read:

366 556.117 Underground facility damage prevention review
367 panel.—

368 (1) The underground facility damage prevention review panel
369 is established under the Division of State Fire Marshal within
370 the Department of Financial Services to review complaints of an
371 alleged violation under this chapter to identify issues or
372 potential issues with damage prevention and enforcement. The
373 review panel shall identify areas in the state where additional
374 education related to damage prevention and enforcement is needed
375 and shall recommend solutions to remedy issues related to damage
376 prevention and enforcement. The review panel shall also review
377 current practices for locating underground pipes or other
378 underground facilities that transport hazardous materials which
379 are regulated by the Pipeline and Hazardous Materials Safety
380 Administration of the United States Department of Transportation
381 in this state and determine if any statutory changes are needed
382 to make such pipelines or facilities more resilient and safer
383 for communities. Except as otherwise provided in this section,
384 the review panel shall operate in a manner consistent with s.
385 20.052.

386 (2) The review panel shall consist of nine members
387 appointed by the State Fire Marshal and shall include the



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388 following:

389 (a) One member representing the electrical utility
390 industry.

391 (b) One member representing the telecommunications or cable
392 industry.

393 (c) One member licensed as an underground utility and
394 excavation contractor under chapter 489 and engaged in work
395 within road or highway rights-of-way.

396 (d) One member representing the natural gas industry.

397 (e) One member representing the utility locator industry.

398 (f) One member representing county or municipal water and
399 sewer service providers.

400 (g) One member representing excavators performing work
401 unrelated to construction in road or highway rights-of-way,
402 including landscaping, fencing, or plumbing contractors.

403 (h) One member licensed as an underground utility and
404 excavation contractor under chapter 489 and engaged in work for
405 public utilities.

406 (i) One member representing the public at large.

407 (3) The board of directors shall establish a process to
408 receive applications for the purpose of appointing members to
409 the review panel.

410 (4) Each member shall serve for a 2-year term. A member may
411 not serve more than two consecutive 2-year terms, except that
412 members listed in paragraphs (2) (a)-(e) shall initially serve a
413 1-year term and those members listed in paragraphs (2) (f)-(i)
414 shall serve a 2-year term. All subsequent appointments shall be
415 for 2-year terms. A vacancy for an unexpired term of a member
416 shall be filled in the same manner as the original appointment.



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417 The review panel shall elect from among its members a chair and
418 vice chair and meet quarterly in conjunction with the meeting of
419 the board of directors or at the call of the chair.

420 (5) The Division of State Fire Marshal shall provide staff
421 support and meeting space to the review panel. Members of the
422 panel shall serve without compensation and are not entitled to
423 reimbursement for per diem or travel expenses.

424 Section 6. This act shall take effect July 1, 2020.

425
426 ===== T I T L E A M E N D M E N T =====

427 And the title is amended as follows:

428 Delete everything before the enacting clause
429 and insert:

430 A bill to be entitled
431 An act relating to underground facility damage
432 prevention and safety; amending s. 556.102, F.S.;
433 defining the term "permanent marker" for purposes of
434 the Underground Facility Damage Prevention and Safety
435 Act; amending s. 556.107, F.S.; providing noncriminal
436 violations relating to the transportation of certain
437 hazardous materials; authorizing the State Fire
438 Marshal or local fire chief to issue certain
439 citations; providing enhanced civil penalties;
440 providing disposition of the civil penalty; requiring
441 a report by additional entities; providing criminal
442 penalties; amending s. 556.116, F.S.; providing that
443 certain incident reports must be submitted to, and
444 investigated by, the State Fire Marshal, the local
445 fire chief, a local or state law enforcement officer,



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446 a government code inspector, or a code enforcement
447 officer; authorizing the State Fire Marshal, the local
448 fire chief, a local or state law enforcement officer,
449 a government code inspector, or a code enforcement
450 officer to issue citations and civil penalties;
451 providing for disposition of the civil penalty;
452 removing provisions relating to hearings by the
453 Division of Administrative Hearings of certain
454 incidents; creating s. 556.117, F.S.; creating an
455 underground facility damage prevention review panel
456 under the Division of State Fire Marshal within the
457 Department of Financial Services; providing duties and
458 membership of the review panel; specifying the term
459 limits of the review panel; requiring the Division of
460 State Fire Marshal to provide support to the review
461 panel; providing that members of the panel serve
462 without reimbursement or compensation; providing an
463 effective date.