

By Senator Flores

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1                   A bill to be entitled  
2       An act relating to underground facility damage  
3       prevention and safety; amending s. 556.107, F.S.;  
4       providing noncriminal violations relating to the  
5       transportation of certain hazardous materials;  
6       authorizing the State Fire Marshal or local fire chief  
7       to issue certain citations; providing enhanced civil  
8       penalties; providing for disposition of the civil  
9       penalty; requiring a report by additional entities;  
10      amending s. 556.116, F.S.; providing that certain  
11      incident reports must be transmitted to, and  
12      investigated by, the State Fire Marshal, the local  
13      fire chief, a local or state law enforcement officer,  
14      a government code inspector, or a code enforcement  
15      officer; authorizing the State Fire Marshal, the local  
16      fire chief, a local or state law enforcement officer,  
17      a government code inspector, or a code enforcement  
18      officer to issue citations and civil penalties;  
19      providing for disposition of the civil penalty;  
20      removing provisions relating to hearings by the  
21      Division of Administrative Hearings in connection with  
22      certain incidents; creating s. 556.117, F.S.; creating  
23      an underground facility damage prevention review  
24      panel; providing duties and membership of the review  
25      panel; specifying the term limits of the review panel;  
26      requiring the State Fire Marshal to provide support to  
27      the review panel; specifying how the review panel will  
28      be funded; providing an effective date.  
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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Section 556.107, Florida Statutes, is amended to  
33 read:

34 556.107 Violations.—

35 (1) NONCRIMINAL INFRACTIONS.—

36 (a) 1. Violations of the following provisions are  
37 noncriminal infractions:

38 ~~a.1.~~ Section 556.105(1), relating to providing required  
39 information.

40 ~~b.2.~~ Section 556.105(6), relating to the avoidance of  
41 excavation.

42 ~~c.3.~~ Section 556.105(11), relating to the need to stop  
43 excavation or demolition because marks are no longer visible,  
44 or, in the case of underwater facilities, are inadequately  
45 documented.

46 ~~d.4.~~ Section 556.105(12), relating to the need to cease  
47 excavation or demolition activities because of contact or damage  
48 to an underground facility.

49 ~~e.5.~~ Section 556.105(5) (a) and (b), relating to  
50 identification of underground facilities, if a member operator  
51 does not mark an underground facility, but not if a member  
52 operator marks an underground facility incorrectly.

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

55 ~~g.7.~~ Section 556.114(1), (2), (3), and (4), relating to a  
56 failure to follow low-impact marking practices, as defined  
57 therein.

58 2. Violations of the following provisions when related to

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59 an underground pipe or other underground facility transporting  
60 hazardous materials that are regulated by the Pipeline and  
61 Hazardous Materials Safety Administration of the United States  
62 Department of Transportation are noncriminal infractions,  
63 subject to enhanced civil penalties under paragraph (c):

64 a. Section 556.105(1), relating to providing required  
65 information.

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

68 c. Section 556.105(6), relating to the avoidance of certain  
69 excavation.

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

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

76 (b) Any excavator or member operator who commits a  
77 noncriminal infraction under paragraph (a) may be issued a  
78 citation by the State Fire Marshal, the fire chief of the county  
79 in which the infraction happened, any local or state law  
80 enforcement officer, government code inspector, or code  
81 enforcement officer, and the issuer of a citation may require an  
82 excavator to cease work on any excavation or not start a  
83 proposed excavation until there has been compliance with the  
84 provisions of this chapter. Citations shall be hand delivered to  
85 any employee of the excavator or member operator who is involved  
86 in the noncriminal infraction. The citation shall be issued in  
87 the name of the excavator ~~or member operator, whichever is~~

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88 applicable.

89 (c)1. Any excavator or member operator who commits a  
90 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~  
91 may be required to pay a civil penalty of \$500 plus court costs  
92 ~~for each infraction, which is \$500 plus court costs.~~ If a  
93 citation is issued by the State Fire Marshal, a fire chief, a  
94 state law enforcement officer, a local law enforcement officer,  
95 a local government code inspector, or a code enforcement  
96 officer, 80 percent of the civil penalty collected by the clerk  
97 of the court shall be distributed to the governmental entity  
98 whose employee issued the citation and 20 percent of the penalty  
99 shall be retained by the clerk to cover administrative costs, in  
100 addition to other court costs. Any person who fails to properly  
101 respond to a citation issued under ~~pursuant to~~ paragraph (b)  
102 shall, in addition to the citation, be charged with the offense  
103 of failing to respond to the citation and, upon conviction,  
104 commits a misdemeanor of the second degree, punishable as  
105 provided in s. 775.082 or s. 775.083. A written warning to this  
106 effect must be provided at the time any citation is issued under  
107 ~~pursuant to~~ paragraph (b).

108 2. Any excavator or member operator who commits a  
109 noncriminal infraction under subparagraph (a)2. may be required  
110 to pay an enhanced civil penalty of \$2,500 plus 5 percent in  
111 addition to any other court costs for each infraction. If a  
112 citation is issued by the State Fire Marshal, a fire chief, a  
113 state law enforcement officer, a local law enforcement officer,  
114 a local government code inspector, or a code enforcement  
115 officer, 100 percent of the civil penalty collected by the clerk  
116 of the court shall be distributed to the governmental entity

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117 whose employee issued the citation. The additional 5 percent,  
118 plus any additional court costs, is to be retained by the clerk  
119 to cover administrative costs. Any person who fails to properly  
120 respond to a citation issued under paragraph (b) shall, in  
121 addition to the citation, be charged with the offense of failing  
122 to respond to the citation and, upon conviction, commits a  
123 misdemeanor of the second degree, punishable as provided in s.  
124 775.082 or s. 775.083. A written warning to this effect must be  
125 provided at the time a citation is issued under paragraph (b).

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

129 (e) A person charged with a noncriminal infraction under  
130 paragraph (a) may pay the applicable civil penalty plus the  
131 additional court costs, by mail or in person, within 30 days  
132 after the date of receiving the citation. If the person cited  
133 pays the ~~civil~~ penalty, she or he is deemed to have admitted to  
134 committing the infraction and to have waived the right to a  
135 hearing on the issue of commission of the infraction. The  
136 admission may be used as evidence in any other proceeding under  
137 this chapter.

138 (f) Any person may elect to have a hearing on the  
139 commission of the infraction ~~appear~~ before the county court. A  
140 person who elects to have a hearing waives ~~and if so electing is~~  
141 ~~deemed to have waived~~ the limitations on the civil penalties  
142 ~~penalty~~ specified in paragraph (c). The court, after a hearing,  
143 shall make a determination as to whether an infraction has been  
144 committed. If the commission of an infraction has been proven,  
145 the court may impose a civil penalty not to exceed \$5,000 plus

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146 court costs for each infraction. In determining the amount of  
147 the civil penalty, the court may consider previous noncriminal  
148 infractions committed.

149 (g) At a court hearing under this chapter, the commission  
150 of a charged infraction must be proven by a preponderance of the  
151 evidence.

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

156 (i) Sunshine State One-Call of Florida, Inc., may, at its  
157 own cost, retain an attorney to assist in the presentation of  
158 relevant facts and law in the county court proceeding pertaining  
159 to the citation issued under this section. The corporation may  
160 also appear in any case appealed to the circuit court if a  
161 county court judge finds that an infraction of the chapter was  
162 committed. An appellant in the circuit court proceeding shall  
163 timely notify the corporation of any appeal under this section.

164 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
165 clerk of court shall submit a report to the State Fire Marshal,  
166 the Public Service Commission, and Sunshine State One-Call of  
167 Florida, Inc., listing each violation notice written under  
168 paragraph (1)(a) which has been filed in that county during the  
169 preceding calendar year. The report must state the name and  
170 address of the member or excavator who committed each infraction  
171 and indicate whether or not the civil penalty for the infraction  
172 was paid.

173 (3) MISDEMEANORS.—Any person who knowingly and willfully  
174 removes or otherwise destroys the valid stakes or other valid

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175 physical markings described in s. 556.105(5) (a) and (b) used to  
176 mark the horizontal route of an underground facility commits a  
177 misdemeanor of the second degree, punishable as provided in s.  
178 775.082 or s. 775.083. For purposes of this subsection, stakes  
179 or other nonpermanent physical markings are considered valid for  
180 30 calendar days after information is provided to the system  
181 under s. 556.105(1) (a).

182 Section 2. Section 556.116, Florida Statutes, is amended to  
183 read:

184 556.116 High-priority subsurface installations; special  
185 procedures.—

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

187 ~~(a) "Division" means the Division of Administrative~~  
188 ~~Hearings.~~

189 (a) ~~(b)~~ "High-priority subsurface installation" means an  
190 underground gas transmission or gas distribution pipeline, an  
191 underground pipeline used to transport gasoline, jet fuel, or  
192 any other refined petroleum product or hazardous or highly  
193 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
194 the pipeline is deemed to be critical by the operator of the  
195 pipeline and is identified as a high-priority subsurface  
196 installation to an excavator who has provided a notice of intent  
197 to excavate under ~~pursuant to~~ s. 556.105(1), or would have been  
198 identified as a high-priority subsurface installation except for  
199 the excavator's failure to give proper notice of intent to  
200 excavate.

201 (b) ~~(e)~~ "Incident" means an event that involves damage to a  
202 high-priority subsurface installation that has been identified  
203 as such by the operator according to the notification procedures

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204 set forth in subsection (2) and that:

205 1. Results in death or serious bodily injury requiring  
206 inpatient hospitalization.

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

210 (2) When an excavator proposes to excavate or demolish  
211 within 15 feet of the horizontal route of an underground  
212 facility that has been identified as a high-priority subsurface  
213 installation by the operator of the facility, the operator  
214 shall, in addition to identifying the horizontal route of its  
215 facility as set forth in s. 556.105(5) (a) and (b), and within  
216 the time period set forth in s. 556.105(9) (a) for a positive  
217 response, notify the excavator that the facility is a high-  
218 priority subsurface installation. If the member operator  
219 provides such timely notice of the existence of a high-priority  
220 subsurface installation, an excavator shall notify the operator  
221 of the planned excavation start date and time before beginning  
222 excavation. If the member operator does not provide timely  
223 notice, the excavator may proceed, after waiting the prescribed  
224 time period set forth in s. 556.105(9) (a), to excavate without  
225 notifying the member operator of the excavation start date and  
226 time. The exemptions stated in s. 556.108 apply to the  
227 notification requirements in this subsection.

228 (3) (a) An alleged commission of an infraction listed in s.  
229 556.107(1) which results in an incident must be reported to the  
230 system by a member operator or an excavator within 24 hours  
231 after learning of the alleged occurrence of an incident.

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



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233 occurred, the system shall transmit an incident report to the  
234 State Fire Marshal, the fire chief of the county in which the  
235 incident happened, a local or state law enforcement officer, a  
236 government code inspector, or a code enforcement officer in  
237 order to ~~division and contract with the division so that the~~  
238 division may conduct an investigation ~~a hearing~~ to determine  
239 whether an incident has occurred, and, if so, whether a  
240 violation of s. 556.107(1) (a) was a proximate cause of the  
241 incident. ~~The contract for services to be performed by the~~  
242 ~~division must include provisions for the system to reimburse the~~  
243 ~~division for any costs incurred by the division for court~~  
244 ~~reporters, transcript preparation, travel, facility rental, and~~  
245 ~~other customary hearing costs, in the manner set forth in s.~~  
246 ~~120.65(9).~~

247 (c) The State Fire Marshal, a local fire chief, a local or  
248 state law enforcement officer, a government code inspector, or a  
249 code enforcement officer ~~division has jurisdiction in a~~  
250 ~~proceeding under this section to determine the facts and law~~  
251 ~~concerning an alleged incident. The division may~~ issue a  
252 citation and impose a civil penalty ~~fine~~ against a violator in  
253 an amount not to exceed \$50,000 if the person violated a  
254 provision of s. 556.107(1) (a) and that violation was a proximate  
255 cause of the incident. However, if a state agency or political  
256 subdivision caused the incident, the state agency or political  
257 subdivision may not be fined in an amount in excess of \$10,000.

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

261 (e) If a civil penalty is imposed by the State Fire

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262 Marshal, a local fire chief, a local or state law enforcement  
263 officer, a government code inspector, or a code enforcement  
264 officer under this subsection, 95 percent of the civil penalty  
265 collected by the clerk of the court shall be distributed to the  
266 governmental entity whose employee issued the citation and civil  
267 penalty and 5 percent of the civil penalty shall be retained by  
268 the clerk to cover administrative costs ~~A fine against an~~  
269 ~~excavator or a member operator imposed under this subsection~~  
270 ~~shall be paid to the system, which shall use the collected fines~~  
271 ~~to satisfy the costs incurred by the system for any proceedings~~  
272 ~~under this section. To the extent there are any funds remaining,~~  
273 ~~the system may use the funds exclusively for damage prevention~~  
274 ~~education.~~

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

279 ~~(4)(a) The division shall issue and serve on all original~~  
280 ~~parties an initial order that assigns the case to a specific~~  
281 ~~administrative law judge and requests information regarding~~  
282 ~~scheduling the final hearing within 5 business days after the~~  
283 ~~division receives a petition or request for hearing. The~~  
284 ~~original parties in the proceeding include all excavators and~~  
285 ~~member operators identified by the system as being involved in~~  
286 ~~the alleged incident. The final hearing must be conducted within~~  
287 ~~60 days after the date the petition or the request for a hearing~~  
288 ~~is filed with the division.~~

289 ~~(b) Unless the parties otherwise agree, venue for the~~  
290 ~~hearing shall be in the county in which the underground facility~~

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291 ~~is located.~~

292 ~~(c) An intervenor in the proceeding must file a petition to~~  
293 ~~intervene no later than 15 days before the final hearing. A~~  
294 ~~person who has a substantial interest in the proceeding may~~  
295 ~~intervene.~~

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

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

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

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

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

306 ~~(b) All parties shall attend a prehearing conference for~~  
307 ~~the purpose of identifying the legal and factual issues to be~~  
308 ~~considered at the final hearing, the names and addresses of~~  
309 ~~witnesses who may be called to testify at the final hearing,~~  
310 ~~documentary evidence that will be offered at the final hearing,~~  
311 ~~the range of penalties that may be imposed, and any other matter~~  
312 ~~that would expedite resolution of the proceeding. The prehearing~~  
313 ~~conference may be held by telephone conference call.~~

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

318 ~~(d) All parties shall have an opportunity to respond, to~~  
319 ~~present evidence and argument on all issues involved, to conduct~~

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320 ~~cross examination and submit rebuttal evidence, and to be~~  
321 ~~represented by counsel or other qualified representative.~~

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

323 ~~1. All notices, pleadings, motions, and intermediate~~  
324 ~~rulings.~~

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

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

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

328 ~~5. Matters placed on the record after an ex parte~~  
329 ~~communication.~~

330 ~~6. The written final order of the administrative law judge~~  
331 ~~presiding at the final hearing.~~

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

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

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

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

343 ~~2. Conclusions of law. In determining whether a party has~~  
344 ~~committed an infraction of s. 556.107(1) (a), and whether the~~  
345 ~~infraction was a proximate cause of an incident, the commission~~  
346 ~~of an infraction must be proven by a preponderance of the~~  
347 ~~evidence.~~

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

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

351  
352 ~~The final order of the administrative law judge constitutes~~  
353 ~~final agency action subject to judicial review pursuant to s.~~  
354 ~~120.68.~~

355 Section 3. Section 556.117, Florida Statutes, is created to  
356 read:

357 556.117 Underground facility damage prevention review  
358 panel.-

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

377 (2) The review panel shall consist of nine members

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378 appointed by the Sunshine State One-Call of Florida, Inc., board  
379 of directors and shall include the following:

380 (a) One member representing the electrical utility  
381 industry.

382 (b) One member representing the telecommunications  
383 industry.

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

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

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

389 (f) One member representing county or municipal water and  
390 sewer service providers.

391 (g) One member representing excavators performing work  
392 unrelated to construction within road or highway rights-of-way,  
393 including landscaping, fencing, or plumbing contractors.

394 (h) One member licensed as an underground utility and  
395 excavation contractor under chapter 489 and engaged in work for  
396 public utilities.

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

398 (3) The board of directors shall establish a process to  
399 receive applications for the purpose of appointing members to  
400 the review panel.

401 (4) Each member shall serve for a 2-year term. A member may  
402 not serve more than two consecutive 2-year terms, except that  
403 members listed in paragraphs (2) (a)-(e) shall initially serve a  
404 1-year term and those members listed in paragraphs (2) (f)-(i)  
405 shall serve a 2-year term. All subsequent appointments shall be  
406 for 2-year terms. A vacancy for an unexpired term of a member

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407 shall be filled in the same manner as the original appointment.  
408 The review panel shall elect from among its members a chair and  
409 vice chair and meet quarterly in conjunction with the meeting of  
410 the board of directors or at the call of the chair.

411 (5) The Division of State Fire Marshal shall provide staff  
412 support and meeting space to the review panel. To the extent  
413 expenses to operate the review panel are not offset through  
414 civil penalties recovered under s. 556.107, member operators  
415 must equally share in the cost of the operation of the review  
416 panel through monthly assessments, which are in addition to the  
417 monthly assessments provided in s. 556.110.

418 Section 4. This act shall take effect July 1, 2020.