

By the Committee on Infrastructure and Security; and 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. 556.102, F.S.;
4 defining the term "permanent marker" for purposes of
5 the Underground Facility Damage Prevention and Safety
6 Act; amending s. 556.107, F.S.; providing noncriminal
7 violations relating to the transportation of certain
8 hazardous materials; authorizing the State Fire
9 Marshal or local fire chief to issue certain
10 citations; providing enhanced civil penalties;
11 providing disposition of the civil penalty; requiring
12 a report by additional entities; providing criminal
13 penalties; amending s. 556.116, F.S.; providing that
14 certain incident reports must be submitted to, and
15 investigated by, 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; authorizing the State Fire Marshal, the local
19 fire chief, a local or state law enforcement officer,
20 a government code inspector, or a code enforcement
21 officer to issue citations and civil penalties;
22 providing for disposition of the civil penalty;
23 removing provisions relating to hearings by the
24 Division of Administrative Hearings of certain
25 incidents; creating s. 556.117, F.S.; creating an
26 underground facility damage prevention review panel
27 under the Division of State Fire Marshal within the
28 Department of Financial Services; providing duties and
29 membership of the review panel; specifying the term

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30 limits of the review panel; requiring the Division of
31 State Fire Marshal to provide support to the review
32 panel; providing that members of the panel serve
33 without reimbursement or compensation; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsections (9) through (14) of section 556.102,
39 Florida Statutes, are redesignated as subsections (10) through
40 (15), respectively, and a new subsection (9) is added to that
41 section, to read:

42 556.102 Definitions.—As used in this act:

43 (9) "Permanent marker" means a clearly visible indication
44 of the approximate location of an underground facility which is
45 made of material that is durable in nature and which is
46 reasonably expected to remain in position for the life of the
47 underground facility.

48 Section 2. Section 556.107, Florida Statutes, is amended to
49 read:

50 556.107 Violations.—

51 (1) NONCRIMINAL INFRACTIONS.—

52 (a) 1. Violations of the following provisions are
53 noncriminal infractions:

54 ~~a.1.~~ Section 556.105(1), relating to providing required
55 information.

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

58 ~~c.3.~~ Section 556.105(11), relating to the need to stop

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59 excavation or demolition because marks are no longer visible,
60 or, in the case of underwater facilities, are inadequately
61 documented.

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

65 ~~e.5.~~ Section 556.105(5) (a) and (b), relating to
66 identification of underground facilities, if a member operator
67 does not mark an underground facility, but not if a member
68 operator marks an underground facility incorrectly.

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

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

74 2. Violations of the following provisions when related to
75 an underground pipe or other underground facility transporting
76 hazardous materials that are regulated by the Pipeline and
77 Hazardous Materials Safety Administration of the United States
78 Department of Transportation are noncriminal infractions,
79 subject to enhanced civil penalties under paragraph (c):

80 a. Section 556.105(1), relating to providing required
81 information.

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

84 c. Section 556.105(6), relating to the avoidance of certain
85 excavation.

86 d. Section 556.105(11), relating to the need to stop
87 excavation or demolition because certain marks are no longer

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88 visible or are inadequately documented.

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

92 (b) Any excavator or member operator who commits a
93 noncriminal infraction under paragraph (a) may be issued a
94 citation by the State Fire Marshal; the fire chief of the
95 special district, municipality, or county; or any local or state
96 law enforcement officer, government code inspector, or code
97 enforcement officer, and the issuer of a citation may require an
98 excavator to cease work on any excavation or not start a
99 proposed excavation until there has been compliance with the
100 provisions of this chapter. Citations shall be hand delivered to
101 any employee of the excavator or member operator who is involved
102 in the noncriminal infraction. The citation shall be issued in
103 the name of the excavator or member operator, whichever is
104 applicable.

105 (c)1. Any excavator or member operator who commits a
106 noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~
107 may be required to pay a civil penalty of \$500 plus court costs
108 ~~for each infraction, which is \$500 plus court costs.~~ If a
109 citation is issued by the State Fire Marshal; the fire chief of
110 the special district, municipality, or county; a state law
111 enforcement officer;; a local law enforcement officer;; a local
112 government code inspector;; or a code enforcement officer, 80
113 percent of the civil penalty collected by the clerk of the court
114 shall be distributed to the governmental entity whose employee
115 issued the citation and 20 percent of the penalty shall be
116 retained by the clerk to cover administrative costs, in addition

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117 to other court costs. Any person who fails to properly respond
118 to a citation issued under ~~pursuant to~~ paragraph (b) shall, in
119 addition to the citation, be charged with the offense of failing
120 to respond to the citation and, upon conviction, commits a
121 misdemeanor of the second degree, punishable as provided in s.
122 775.082 or s. 775.083. A written warning to this effect must be
123 provided at the time any citation is issued under ~~pursuant to~~
124 paragraph (b).

125 2. Any excavator or member operator who commits a
126 noncriminal infraction under subparagraph (a)2. may be required
127 to pay an enhanced civil penalty of \$2,500 plus 5 percent in
128 addition to any other court costs for each infraction. If a
129 citation is issued by the State Fire Marshal; the fire chief of
130 the special district, municipality, or county; a state law
131 enforcement officer; a local law enforcement officer; a local
132 government code inspector; or a code enforcement officer, 100
133 percent of the civil penalty collected by the clerk of the court
134 shall be distributed to the governmental entity whose employee
135 issued the citation. The additional 5 percent, plus any
136 additional court costs, is to be retained by the clerk to cover
137 administrative costs. Any person who willfully fails to properly
138 respond to a citation issued under paragraph (b) shall, in
139 addition to the citation, be charged with the offense of failing
140 to respond to the citation and, upon conviction, commits a
141 misdemeanor of the second degree, punishable as provided in s.
142 775.082 or s. 775.083. A written warning to this effect must be
143 provided at the time a citation is issued under paragraph (b).

144 (d) Any person cited for an infraction under paragraph (a)
145 may post a bond, which must ~~shall~~ be equal in amount to the

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146 applicable civil penalty plus any additional court costs.

147 (e) A person charged with a noncriminal infraction under
148 paragraph (a) may pay the applicable civil penalty plus the
149 additional court costs, by mail or in person, within 30 days
150 after the date of receiving the citation. If the person cited
151 pays the civil penalty, she or he is deemed to have admitted to
152 committing the infraction and to have waived the right to a
153 hearing on the issue of commission of the infraction. The
154 admission may be used as evidence in any other proceeding under
155 this chapter.

156 (f) Any person may elect to have a hearing on the
157 commission of the infraction ~~appear~~ before the county court. A
158 person who elects to have a hearing waives ~~and if so electing is~~
159 ~~deemed to have waived~~ the limitations on the civil penalties
160 penalty specified in paragraph (c). The court, after a hearing,
161 shall make a determination as to whether an infraction has been
162 committed. If the commission of an infraction has been proven,
163 the court may impose a civil penalty not to exceed \$5,000 plus
164 court costs for each infraction. In determining the amount of
165 the civil penalty, the court may consider previous noncriminal
166 infractions committed.

167 (g) At a court hearing under this chapter, the commission
168 of a charged infraction must be proven by a preponderance of the
169 evidence.

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

174 (i) Sunshine State One-Call of Florida, Inc., may, at its

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175 own cost, retain an attorney to assist in the presentation of
176 relevant facts and law in the county court proceeding pertaining
177 to the citation issued under this section. The corporation may
178 also appear in any case appealed to the circuit court if a
179 county court judge finds that an infraction of the chapter was
180 committed. An appellant in the circuit court proceeding shall
181 timely notify the corporation of any appeal under this section.

182 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
183 clerk of court shall submit a report to the State Fire Marshal
184 and Sunshine State One-Call of Florida, Inc., listing each
185 violation notice written under paragraph (1)(a) which has been
186 filed in that county during the preceding calendar year. The
187 report must state the name and address of the member or
188 excavator who committed each infraction and indicate whether or
189 not the civil penalty for the infraction was paid.

190 (3) MISDEMEANORS.—

191 (a) Any person who knowingly and willfully removes or
192 otherwise destroys the valid stakes or other valid physical
193 markings described in s. 556.105(5)(a) and (b) used to mark the
194 horizontal route of an underground facility commits a
195 misdemeanor of the second degree, punishable as provided in s.
196 775.082 or s. 775.083. For purposes of this subsection, stakes
197 or other nonpermanent physical markings are considered valid for
198 30 calendar days after information is provided to the system
199 under s. 556.105(1)(a).

200 (b) Any person who knowingly and willfully removes or
201 damages a permanent marker that has been placed to identify the
202 approximate location of an underground facility commits a
203 misdemeanor of the second degree, punishable as provided in s.

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204 775.082 or s. 775.083.

205 Section 3. Section 556.116, Florida Statutes, is amended to
206 read:

207 556.116 High-priority subsurface installations; special
208 procedures.—

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

210 ~~(a) "Division" means the Division of Administrative~~
211 ~~Hearings.~~

212 (a)~~(b)~~ "High-priority subsurface installation" means an
213 underground gas transmission or gas distribution pipeline, an
214 underground pipeline used to transport gasoline, jet fuel, or
215 any other refined petroleum product or hazardous or highly
216 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
217 the pipeline is deemed to be critical by the operator of the
218 pipeline and is identified as a high-priority subsurface
219 installation to an excavator who has provided a notice of intent
220 to excavate under ~~pursuant to~~ s. 556.105(1), or would have been
221 identified as a high-priority subsurface installation except for
222 the excavator's failure to give proper notice of intent to
223 excavate.

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

228 1. Results in death or serious bodily injury requiring
229 inpatient hospitalization.

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

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233 (2) When an excavator proposes to excavate or demolish
234 within 15 feet of the horizontal route of an underground
235 facility that has been identified as a high-priority subsurface
236 installation by the operator of the facility, the operator
237 shall, in addition to identifying the horizontal route of its
238 facility as set forth in s. 556.105(5)(a) and (b), and within
239 the time period set forth in s. 556.105(9)(a) for a positive
240 response, notify the excavator that the facility is a high-
241 priority subsurface installation. If the member operator
242 provides such timely notice of the existence of a high-priority
243 subsurface installation, an excavator shall notify the operator
244 of the planned excavation start date and time before beginning
245 excavation. If the member operator does not provide timely
246 notice, the excavator may proceed, after waiting the prescribed
247 time period set forth in s. 556.105(9)(a), to excavate without
248 notifying the member operator of the excavation start date and
249 time. The exemptions stated in s. 556.108 apply to the
250 notification requirements in this subsection.

251 (3)(a) An alleged commission of an infraction listed in s.
252 556.107(1) which results in an incident must be reported to the
253 system by a member operator or an excavator within 24 hours
254 after learning of the alleged occurrence of an incident.

255 (b) Upon receipt of an allegation that an incident has
256 occurred, the system shall transmit an incident report to the
257 State Fire Marshal; the fire chief of the special district,
258 municipality, or county; a local or state law enforcement
259 officer; a government code inspector; or a code enforcement
260 officer in order to ~~division and contract with the division so~~
261 ~~that the division may~~ conduct an investigation a hearing to

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262 determine whether an incident has occurred, and, if so, whether
263 a violation of s. 556.107(1)(a) was a proximate cause of the
264 incident. ~~The contract for services to be performed by the~~
265 ~~division must include provisions for the system to reimburse the~~
266 ~~division for any costs incurred by the division for court~~
267 ~~reporters, transcript preparation, travel, facility rental, and~~
268 ~~other customary hearing costs, in the manner set forth in s.~~
269 ~~120.65(9).~~

270 (c) The State Fire Marshal; the fire chief of the special
271 district, municipality, or county; a local or state law
272 enforcement officer; a government code inspector; or a code
273 enforcement officer ~~division has jurisdiction in a proceeding~~
274 ~~under this section to determine the facts and law concerning an~~
275 ~~alleged incident. The division may issue a citation and impose a~~
276 civil penalty fine against a violator in an amount not to exceed
277 \$50,000 if the person violated a provision of s. 556.107(1)(a)
278 and that violation was a proximate cause of the incident.
279 However, if a state agency or political subdivision caused the
280 incident, the state agency or political subdivision may not be
281 fined in an amount in excess of \$10,000.

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

285 (e) If a civil penalty is imposed by the State Fire
286 Marshal; the fire chief of the special district, municipality,
287 or county; a local or state law enforcement officer; a
288 government code inspector; or a code enforcement officer under
289 this subsection, 95 percent of the civil penalty collected by
290 the clerk of the court shall be distributed to the governmental

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291 entity whose employee issued the citation and civil penalty and
292 5 percent of the civil penalty shall be retained by the clerk to
293 cover administrative costs ~~A fine against an excavator or a~~
294 ~~member operator imposed under this subsection shall be paid to~~
295 ~~the system, which shall use the collected fines to satisfy the~~
296 ~~costs incurred by the system for any proceedings under this~~
297 ~~section. To the extent there are any funds remaining, the system~~
298 ~~may use the funds exclusively for damage prevention education.~~

299 (f) This section does not change the basis for civil
300 liability. The findings and results of an investigation a
301 hearing under this section may not be used as evidence of
302 liability in any civil action.

303 ~~(4)(a) The division shall issue and serve on all original~~
304 ~~parties an initial order that assigns the case to a specific~~
305 ~~administrative law judge and requests information regarding~~
306 ~~scheduling the final hearing within 5 business days after the~~
307 ~~division receives a petition or request for hearing. The~~
308 ~~original parties in the proceeding include all excavators and~~
309 ~~member operators identified by the system as being involved in~~
310 ~~the alleged incident. The final hearing must be conducted within~~
311 ~~60 days after the date the petition or the request for a hearing~~
312 ~~is filed with the division.~~

313 ~~(b) Unless the parties otherwise agree, venue for the~~
314 ~~hearing shall be in the county in which the underground facility~~
315 ~~is located.~~

316 ~~(c) An intervenor in the proceeding must file a petition to~~
317 ~~intervene no later than 15 days before the final hearing. A~~
318 ~~person who has a substantial interest in the proceeding may~~
319 ~~intervene.~~

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- 320 ~~(5) The following procedures apply:~~
- 321 ~~(a) Motions shall be limited to the following:~~
- 322 ~~1. A motion in opposition to the petition.~~
- 323 ~~2. A motion requesting discovery beyond the informal~~
- 324 ~~exchange of documents and witness lists described in paragraph~~
- 325 ~~(c). Upon a showing of necessity, additional discovery may be~~
- 326 ~~permitted in the discretion of the administrative law judge, but~~
- 327 ~~only if the discovery can be completed no later than 5 days~~
- 328 ~~before the final hearing.~~
- 329 ~~3. A motion for continuance of the final hearing date.~~
- 330 ~~(b) All parties shall attend a prehearing conference for~~
- 331 ~~the purpose of identifying the legal and factual issues to be~~
- 332 ~~considered at the final hearing, the names and addresses of~~
- 333 ~~witnesses who may be called to testify at the final hearing,~~
- 334 ~~documentary evidence that will be offered at the final hearing,~~
- 335 ~~the range of penalties that may be imposed, and any other matter~~
- 336 ~~that would expedite resolution of the proceeding. The prehearing~~
- 337 ~~conference may be held by telephone conference call.~~
- 338 ~~(c) Not later than 5 days before the final hearing, the~~
- 339 ~~parties shall furnish to each other copies of documentary~~
- 340 ~~evidence and lists of witnesses who may testify at the final~~
- 341 ~~hearing.~~
- 342 ~~(d) All parties shall have an opportunity to respond, to~~
- 343 ~~present evidence and argument on all issues involved, to conduct~~
- 344 ~~cross-examination and submit rebuttal evidence, and to be~~
- 345 ~~represented by counsel or other qualified representative.~~
- 346 ~~(e) The record shall consist only of:~~
- 347 ~~1. All notices, pleadings, motions, and intermediate~~
- 348 ~~rulings.~~

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

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

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

352 ~~5. Matters placed on the record after an ex parte~~
353 ~~communication.~~

354 ~~6. The written final order of the administrative law judge~~
355 ~~presiding at the final hearing.~~

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

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

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

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

367 ~~2. Conclusions of law. In determining whether a party has~~
368 ~~committed an infraction of s. 556.107(1) (a), and whether the~~
369 ~~infraction was a proximate cause of an incident, the commission~~
370 ~~of an infraction must be proven by a preponderance of the~~
371 ~~evidence.~~

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

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

375
376 ~~The final order of the administrative law judge constitutes~~
377 ~~final agency action subject to judicial review pursuant to s.~~

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378 ~~120.68.~~

379 Section 4. Upon SB 1092, 2020 Regular Session, becoming a
380 law or similar legislation in the same legislative session or an
381 extension thereof being adopted and becoming a law, paragraph
382 (e) of subsection (3) of section 556.116, Florida Statutes, as
383 amended by this act, is amended to read:

384 556.116 High-priority subsurface installations; special
385 procedures.—

386 (3)

387 (e) If a civil penalty is imposed by the State Fire
388 Marshal; the fire chief of the special district, municipality,
389 or county; a local or state law enforcement officer; a
390 government code inspector; or a code enforcement officer under
391 this subsection, \$2,500 ~~95 percent~~ of the civil penalty
392 collected by the clerk of the court shall be distributed to the
393 governmental entity whose employee issued the citation and civil
394 penalty, ~~and~~ 5 percent of the civil penalty shall be retained by
395 the clerk to cover administrative costs, and the remainder of
396 the civil penalty shall be distributed to the Firefighter Cancer
397 Decontamination Equipment Grant Program created under s.
398 633.137.

399 Section 5. Section 556.117, Florida Statutes, is created to
400 read:

401 556.117 Underground facility damage prevention review
402 panel.—

403 (1) The underground facility damage prevention review panel
404 is established under the Division of State Fire Marshal within
405 the Department of Financial Services to review complaints of an
406 alleged violation under this chapter to identify issues or

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407 potential issues with damage prevention and enforcement. The
408 review panel shall identify areas in the state where additional
409 education related to damage prevention and enforcement is needed
410 and shall recommend solutions to remedy issues related to damage
411 prevention and enforcement. The review panel shall also review
412 current practices for locating underground pipes or other
413 underground facilities that transport hazardous materials which
414 are regulated by the Pipeline and Hazardous Materials Safety
415 Administration of the United States Department of Transportation
416 in this state and determine if any statutory changes are needed
417 to make such pipelines or facilities more resilient and safer
418 for communities. Except as otherwise provided in this section,
419 the review panel shall operate in a manner consistent with s.
420 20.052.

421 (2) The review panel shall consist of nine members
422 appointed by the State Fire Marshal and shall include the
423 following:

424 (a) One member representing the electrical utility
425 industry.

426 (b) One member representing the telecommunications or cable
427 industry.

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

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

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

433 (f) One member representing county or municipal water and
434 sewer service providers.

435 (g) One member representing excavators performing work

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436 unrelated to construction in road or highway rights-of-way,
437 including landscaping, fencing, or plumbing contractors.

438 (h) One member licensed as an underground utility and
439 excavation contractor under chapter 489 and engaged in work for
440 public utilities.

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

442 (3) The State Fire Marshal shall establish a process to
443 receive applications for the purpose of appointing members to
444 the review panel.

445 (4) Each member shall serve for a 2-year term. A member may
446 not serve more than two consecutive 2-year terms, except that
447 members listed in paragraphs (2) (a)-(e) shall initially serve a
448 1-year term and those members listed in paragraphs (2) (f)-(i)
449 shall serve a 2-year term. All subsequent appointments shall be
450 for 2-year terms. A vacancy for an unexpired term of a member
451 shall be filled in the same manner as the original appointment.
452 The review panel shall elect from among its members a chair and
453 vice chair and meet quarterly in conjunction with the meeting of
454 the board of directors or at the call of the chair.

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

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