

By the Committees on Banking and Insurance; and 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" and consolidating
5 other definitions from throughout the chapter;
6 amending s. 556.107, F.S.; revising noncriminal
7 violations and providing noncriminal violations
8 relating to the transportation of certain hazardous
9 materials; authorizing the State Fire Marshal or his
10 or her agents to issue certain citations; providing
11 enhanced civil penalties; providing disposition of the
12 civil penalty; requiring a report by additional
13 entities; providing civil penalties relating to
14 removing or damaging a permanent marker; amending s.
15 556.116, F.S.; moving and consolidating definitions to
16 the definition section for the chapter; providing that
17 certain incident reports must be submitted to, and
18 investigated by, the State Fire Marshal or his or her
19 agents; authorizing the State Fire Marshal or his or
20 her agents to issue citations and civil penalties;
21 providing for disposition of the civil penalty;
22 requiring written warnings for certain noncriminal
23 infractions; providing for an enhanced penalty upon
24 conviction for a failure to respond; removing
25 provisions relating to hearings by the Division of
26 Administrative Hearings of certain incidents; creating
27 s. 556.117, F.S.; requiring Sunshine State One-Call of
28 Florida, Inc., to review certain reports and
29 complaints; requiring the corporation to identify

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30 areas for additional education and recommend
31 solutions; requiring an annual report to the Governor
32 and the Legislature; providing an effective date.
33

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

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

41 556.102 Definitions.—As used in this act:

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

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

58 1. Results in death or serious bodily injury requiring

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59 inpatient hospitalization.

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

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

68 Section 2. Section 556.107, Florida Statutes, is amended to
69 read:

70 556.107 Violations.—

71 (1) NONCRIMINAL INFRACTIONS.—

72 (a) 1. Violations of the following provisions are
73 noncriminal infractions:

74 a.1. Section 556.105(1), relating to providing required
75 information.

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

78 c.2. Section 556.105(6), relating to the avoidance of
79 excavation.

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

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

87 f.5. Section 556.105(5)(a) and (b), relating to

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88 identification of underground facilities, if a member operator
89 does not mark an underground facility, but not if a member
90 operator marks an underground facility incorrectly.

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

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

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

102 a. Section 556.105(1), relating to providing required
103 information.

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

106 c. Section 556.105(6), relating to the avoidance of certain
107 excavation.

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

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

114 (b) Any excavator or member operator who commits a
115 noncriminal infraction under paragraph (a) may be issued a
116 citation by the State Fire Marshal or agents as provided in ss.

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117 633.114 and 633.116; the fire chief of the special district,
118 municipality, or county; or any local or state law enforcement
119 officer, government code inspector, or code enforcement officer,
120 and the issuer of a citation may require an excavator to cease
121 work on any excavation or not start a proposed excavation until
122 there has been compliance with the provisions of this chapter.
123 Citations shall be hand delivered to any employee of the
124 excavator or member operator who is involved in the noncriminal
125 infraction. The citation shall be issued in the name of the
126 excavator or member operator, whichever is applicable.

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

145 2. Any excavator or member operator who commits a

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

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

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

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

173 (f) Any person may elect to have a hearing on the
174 commission of the infraction ~~appear~~ before the county court. A

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175 ~~person who elects to have a hearing waives and if so electing is~~
176 ~~deemed to have waived~~ the limitations on the civil penalties
177 ~~penalty~~ specified in paragraph (c). The court, after a hearing,
178 shall make a determination as to whether an infraction has been
179 committed. If the commission of an infraction has been proven,
180 the court may impose a civil penalty not to exceed the
181 applicable civil penalty \$5,000 plus court costs for each
182 infraction. In determining the amount of the civil penalty, the
183 court may consider previous noncriminal infractions committed.

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

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

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

199 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
200 clerk of court shall submit a report to the State Fire Marshal
201 and Sunshine State One-Call of Florida, Inc., listing each
202 citation issued for a violation ~~notice written~~ under paragraph

203 (1) (a) and s. 556.116(2) (c) which has been filed in that county

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204 during the preceding calendar year. The report must state the
205 name and address of the member or excavator who committed each
206 infraction, the enforcement authority, the specific statutory
207 infraction, and the type of underground facility related to the
208 infraction and must indicate whether or not the civil penalty
209 for the infraction was paid.

210 (3) MISDEMEANORS.—

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

220 (b) Any person who knowingly and willfully removes or
221 damages a permanent marker placed to identify the approximate
222 location of an underground facility commits a misdemeanor of the
223 second degree, punishable as provided in s. 775.082 or s.
224 775.083.

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

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

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

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

232 ~~(b) "High-priority subsurface installation" means an~~

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

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

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

250 ~~2. Results in property damage, including service-~~
251 ~~restoration costs, in an amount in excess of \$50,000 or~~
252 ~~interruption of service to 2,500 or more customers.~~

253 ~~(2)~~ When an excavator proposes to excavate or demolish
254 within 15 feet of the horizontal route of an underground
255 facility that has been identified as a high-priority subsurface
256 installation by the operator of the facility, the operator
257 shall, in addition to identifying the horizontal route of its
258 facility as set forth in s. 556.105(5) (a) and (b), and within
259 the time period set forth in s. 556.105(9) (a) for a positive
260 response, notify the excavator that the facility is a high-
261 priority subsurface installation. If the member operator

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262 provides such timely notice of the existence of a high-priority
263 subsurface installation, an excavator shall notify the operator
264 of the planned excavation start date and time before beginning
265 excavation. If the member operator does not provide timely
266 notice, the excavator may proceed, after waiting the prescribed
267 time period set forth in s. 556.105(9)(a), to excavate without
268 notifying the member operator of the excavation start date and
269 time. The exemptions stated in s. 556.108 apply to the
270 notification requirements in this subsection.

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

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

290 (c) The State Fire Marshal or agents as provided in ss.

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

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

303 (e) If an additional civil penalty is imposed by the State
304 Fire Marshal or his or her agents, 5 percent of the civil
305 penalty must be retained by the clerk to cover administrative
306 costs, and the remainder of the civil penalty must be equally
307 distributed between a program created to procure equipment,
308 supplies, and educational training designed to mitigate
309 firefighter exposure to hazardous, cancer-causing chemicals and
310 between the system to be used exclusively for damage-prevention
311 education ~~A fine against an excavator or a member operator~~
312 ~~imposed under this subsection shall be paid to the system, which~~
313 ~~shall use the collected fines to satisfy the costs incurred by~~
314 ~~the system for any proceedings under this section. To the extent~~
315 ~~there are any funds remaining, the system may use the funds~~
316 ~~exclusively for damage-prevention education.~~

317 (f) Any excavator or member operator who commits a
318 noncriminal infraction under s. 556.116(2)(c) must be provided a
319 written warning at the time a citation is issued stating that

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320 any person who willfully fails to properly respond to a citation
321 must, in addition to the citation, be charged with the offense
322 of failing to respond to the citation and, upon conviction,
323 commits a misdemeanor of the second degree, punishable as
324 provided in s. 775.082 or s. 775.083.

325 (g) This section does not change the basis for civil
326 liability. The findings and results of an investigation a
327 hearing under this section may not be used as evidence of
328 liability in any civil action.

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

339 ~~(b) Unless the parties otherwise agree, venue for the~~
340 ~~hearing shall be in the county in which the underground facility~~
341 ~~is located.~~

342 ~~(c) An intervenor in the proceeding must file a petition to~~
343 ~~intervene no later than 15 days before the final hearing. A~~
344 ~~person who has a substantial interest in the proceeding may~~
345 ~~intervene.~~

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

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

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

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

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

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

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

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

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

373 ~~1. All notices, pleadings, motions, and intermediate~~
374 ~~rulings.~~

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

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

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

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378 ~~5. Matters placed on the record after an ex parte~~
379 ~~communication.~~

380 ~~6. The written final order of the administrative law judge~~
381 ~~presiding at the final hearing.~~

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

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

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

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

393 ~~2. Conclusions of law. In determining whether a party has~~
394 ~~committed an infraction of s. 556.107(1)(a), and whether the~~
395 ~~infraction was a proximate cause of an incident, the commission~~
396 ~~of an infraction must be proven by a preponderance of the~~
397 ~~evidence.~~

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

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

401
402 ~~The final order of the administrative law judge constitutes~~
403 ~~final agency action subject to judicial review pursuant to s.~~
404 ~~120.68.~~

405 Section 4. Section 556.117, Florida Statutes, is created to
406 read:

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407 556.117 Underground facility damage prevention review.—
408 Sunshine State One-Call of Florida, Inc., shall review the
409 reports submitted by the clerks of court to the State Fire
410 Marshal and any complaints of alleged violations under this
411 chapter to identify issues or potential issues with damage
412 prevention and enforcement. The corporation shall identify areas
413 in the state where additional education related to damage
414 prevention and enforcement is needed and shall recommend
415 solutions to remedy issues related to damage prevention and
416 enforcement. The corporation shall, by October 1 of each year,
417 submit to the Governor, the President of the Senate, and the
418 Speaker of the House of Representatives an analysis of its
419 reviews and any recommendations for improving underground
420 facility damage prevention and enforcement.

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